Environment Canada Environnement Canada

DEVELOPMENT OF THE CANADIAN ENVIRONMENTAL PROTECTION ACT : RESPONSE TO PUBLIC INPUT

Canada

DEVELOPMENT OF THE
CANADIAN ENVIRONMENTAL PROTECTION ACT
RESPONSE TO PUBLIC INPUT

90-02437/

CONTENTS

	Page
FOREWORD	iv
PART A: THE CONSULTATION PROCESS	1
Background	3
Early Beginnings	3
Consultation Principles and Protocols	3
The Task Force on Management of Chemicals	4
The Environmental Contaminants Act Amendments Consultative Committee	6
The Draft Environmental Protection Act	7
The National Consultation Meeting	8
The Impact of the Consultation Process on the Draft Act	9
A National Effort	9
PART B: RESPONSE TO WRITTEN SUBMISSIONS RECEIVED BY ENVIRONMENT CANADA BY JUNE 1, 1987	10
Foreword	11
Preamble and General	12
Part I - Toxic Substances	17
Part II - Nutrients	27
Part III - Departments, Agencies, Crown Corporations and Federal Works and Undertakings	28
Part IV - International Air Pollution	29
Part V - General	31
PART C: RESPONSE TO NATIONAL CONSULTATION MEETING WORKSHOPS, MARCH 22-24, 1987	37
Foreword	38
Policy Preamble Workshops	39
Appeal Mechanisms	51
An Existing Chemicals Strategy	53
Establishing Codes, Guidelines and Objectives	56
Enforcement and Compliance	58
A Regulatory Framework for Biotechnology	61
PART D: HIGHLIGHTS OF THE CANADIAN ENVIRONMENTAL PROTECTION ACT	62
PART E: CROSS-INDEX FOR SECTIONS OF THE DRAFT BILL OF JUNE, 1987 (CEPA) AND THE DRAFT BILL OF DECEMBER, 1986 (EPA)	67

FOREWORD

The purpose of this document is three-fold:

1) to outline the nature and extent of the consultation process which led to the drafting of the Canadian Environmental Protection Act;

2) to respond to the comments and suggestions contained in over 300 briefs submitted on the Draft Environmental Protection Act; and,

3) to address the proposals put forward at the National Consultation Meeting on the Draft Environmental Protection Act.

The comments, suggestions and proposals have been analyzed by officials of Environment Canada, National Health and Welfare Canada and the Department of Justice. This analysis has enabled the Minister of the Environment and his officials to improve the draft Environmental Protection Act. The revised legislation, entitled the Canadian Environmental Protection Act, was tabled in the House of Commons for first reading on June 26, 1987.

Both the Minister and his officials are very aware of the value of the consultation process and wish to thank all those who participated, especially those who took the time to prepare written submissions.

PART A: THE CONSULTATION PROCESS

PART A: THE CONSULTATION PROCESS

Background

The environmental protection issue, including toxic chemicals, is highly complex, having broad scientific, economic and social implications. The search for solutions is, of necessity, a collective one involving all the major stakeholders -those who have a vital interest in the issue, will be directly affected by the outcome, and/or can make an important contribution to its resolution.

The Canadian Environmental Protection Act (CEPA) is the culmination of an extensive public consultation process begun over five years ago. All the major stakeholders -federal and provincial governments, industry, labour, academe, environmental and other public interest groups - joined together and pooled their expertise to find workable solutions to the problems posed by the toxic chemicals issue. The inadequacy of existing legislation was identified as one of the major areas requiring immediate attention.

Early Beginnings

In November 1982, Environment Canada convened the New Chemicals Workshop to propose amendments to the Environmental Contaminants Act. The ECA, which had been promulgated in 1976, was already showing signs of inadequacy in dealing with the multiplicity of problems associated with toxic chemicals. The Workshop was attended by officials from a number of federal departments and agencies, the provinces, industry, environmental groups and other public interest groups. The participants continued to hold meetings over a period of two years and, during that time, formulated a set of specific proposals to amend the Environmental Contaminants Act. Although consultations on the proposed amendments were held among the major stakeholders, no overall agreement emerged. One of the major points raised during the consultations was the need for a more formalized consultation process.

Consultation Principles and Protocols

In June 1985, under the leadership of the Niagara Institute, Environment Canada and its major stakeholders developed a set of principles and protocols for consultations. These

deal with how the process of consultation should be structured, the manner in which stakeholders should participate, questions of resources, access to data, consensus building and implementation.

These principles and protocols[1] have formed the basis of a number of major consultations over the last two years:

- the Task Force on the Management of Chemicals that produced the report "From Cradle to Grave: A Management Approach to Chemicals";
- the Environmental Contaminants Act Amendments Consultative Committee that produced the "Final Report of the Environmental Contaminants Act Amendments Consultative Committee";
- the State of the Environment Reporting Consultation; and
- the consultation on the Draft Environmental Protection Act.

The Task Force on the Management of Chemicals

The Task Force on the Management of Chemicals represented a broad cross-section of Canadian society. The group was composed of major leaders from industry and industry associations, labour, environmental and public interest groups and the federal and provincial governments. Together, they set about the task of working towards agreement on how best to manage toxic chemicals in all their diversity. The objective of this initiative was to propose a workable solution to the toxic chemicals issue - one that would minimize risks to human health and the environment while at the same time being supportive of Canada's industrial productivity and competitiveness.

The Task Force recommended that chemicals be managed from cradle-to-grave in a manner that minimizes risks to human health and the environment. It established the life-cycle concept as the key analytical tool for managing chemicals. The life-cycle is a convenient way of expressing the stages a chemical may go through during its life - from research and development, introduction to the market place, manufacture, transportation, distribution, use to disposal.

[1] Copies are available from Environment Canada

The Task Force recommended that some chemicals, those known to have adverse impacts, such as PCBs and dioxins, should be managed by specific regulations, standards or guidelines throughout their life cycles. The majority of chemicals, for which very little human health or environmental information exists, should be managed by actions to control specific stages of their life-cycle, such as manufacturing or disposal.

Key elements of the framework include:

1. The management of chemicals requires a comprehensive, integrated approach.
2. Working together - no one segment of society can develop and implement the required solutions.
3. The emphasis is on prevention.
4. Data generation and sharing is important - the right to know can be balanced with the protection of confidential business information.
5. Targets/objectives for actions are required.
6. Decisive actions to limit human and environmental exposure are required, despite scientific uncertainty on the effects of chemicals.
7. Cost/economic implications are important but so are the costs of inaction.
8. A range of actions is possible from voluntary through to regulatory, but effectiveness and credibility are essential.
9. New chemicals and existing chemicals require equal emphasis.
10. Harmonizing legislative frameworks and jurisdictions is critical.
11. Evaluation and monitoring of effectiveness of action is integral to success.

The Task Force's report "From Cradle to Grave: A Management Approach to Chemicals" was released in October 1986 and provided the conceptual framework for the new Canadian Environmental Protection Act.

The report contains 17 pages outlining the ideal requirements for managing the life-cycle stages, and some appropriate actions to put them in place. This constitutes an ambitious, 10 year undertaking to change the patterns of chemical contamination 10, 15, 25 years from now.

The Environmental Contaminants Act Amendments Consultative Committee

As with the Task Force on Toxic Chemicals, the Environmental Contaminants Act Amendments Consultative Committee was also composed of a team of experts representing the major stakeholders in the management of toxics. In developing its recommendations, the Committee took into account the various competing social, technical and economic aspects of a wide range of concerns. This resulted in a series of consensus recommendations which would:

- broaden the scope of provisions contained in the ECA;
- increase the powers of the Ministers;
- strengthen the enforcement provisions;
- increase information sharing with the public and other levels of government;
- increase public participation in the process of assessing the hazardous nature of chemicals and controlling hazardous chemicals; and
- satisfy Canada's international commitments in the areas of regulated chemicals.

The Committee's proposals would provide important components of the cradle-to-grave framework for chemical management. These components include:

- a notification scheme for new chemicals;
- additional provisions to deal with existing substances; and
- a new notification requirement for the export of banned or severely restricted chemicals.

In addition, the Committee reviewed estimates of the related socio-economic costs and benefits. The estimated additional cost over a ten year period was between 35 and 83 million dollars (in 1986). The major portion of these costs would be borne by the private sector (about 75%) with the remainder by the government. However, the committee concluded that the health and environmental benefits would outweigh the costs of implementing the proposed amendments.

In October 1986, the ECA Amendments Consultative Report was released by the Minister of the Environment and the Minister of National Health and Welfare. The recommenda-

tions of the Committee report have provided the core of the new Canadian Environmental Protection Act.

The Draft Environmental Protection Act

When the two reports from the Task Force on the Management of Chemicals and the ECA Amendments Consultative Committee were received, work began in earnest on the new legislation. Rather than prepare a bill for immediate reading in the House of Commons, the Minister of the Environment decided to prepare a draft Environmental Protection Act and released it for broad public consultation. In many respects, the continued use of the consultation process was a reflection of the quality and comprehensiveness of the recommendations made in the two stakeholder reports. Given the success of the consultation process to date, there was no doubt that for a bill as complex as the draft Environmental Protection Act, widespread public consultation would serve to improve the quality of the final legislation.

On December 18, 1986 the Minister of the Environment and the Minister of National Health and Welfare tabled the draft Environmental Protection Act in the House of Commons. Approximately 8000 copies of the Act were released along with a detailed information package describing the proposals in the Act. These were sent to all levels of government, industry, labour, environmental and other public interest groups, native organizations and the general public requesting their comments on the proposed legislation.

In January, 1987, 15 public information sessions covering all the provinces and territories were convened. These sessions were well-attended with anywhere from 50 to 200 present. The audiences were varied and included all the major stakeholders, individual members of the public and the media.

During February and March, 16 public consultation sessions were held across Canada to receive briefs on the draft EPA. Attendance at these sessions varied from between 20 to 50 with 5 to 10 briefs being submitted at each session. Bilateral meetings, upwards of 50 in number, were also held with industry, labour, municipalities, environmental groups and others to discuss specific aspects of the draft CEPA.

Throughout the winter months, federal officials also met with each of the provinces and territories to explain the Bill, and discuss implementation agreements. There was general agreement with the provinces and territories to proceed with agreements clearly defining the respective roles and responsibilities of each government in implementing the Act.

The National Consultation Meeting

A unique aspect of the consultation process was the opportunity to discuss key issues in depth in multi-stakeholder workshops. This opportunity was presented by the National Consultation Meeting held in Ottawa, March 22-24, 1987. Of the 350 people invited, over 250 participants from every corner of Canada attended. The meeting provided these leaders from governments, industry, labour, native and environmental groups the opportunity to meet with each other to discuss the key issues as well as the merits and deficiencies of the draft Environmental Protection Act. Background material was provided by the 200 briefs submitted up to the time of the meeting.

The following workshops focussing on the major issues related to the draft EPA were held:

- Policy Preamble
  - A. Policy Aspects
  - B. Legal/Constitutional Aspects
  - C. Environmental Bill of Rights
  - D. The North
- A Regulatory Framework for Biotechnology
- An Existing Chemicals Strategy
- Appeal Mechanisms
- Establishing Codes, Objectives, Guidelines and Standards
- Compliance and Enforcement

At the end of the two days, there was genuine agreement that the consultative process as a whole and the National Meeting in particular had provided for an effective and fruitful multi-stakeholder forum. Above all, there was the recognition that the proposals developed by the workshop participants for improving and strengthening the draft Act would not gather dust on some government shelf but, rather, would be studied and, where possible, acted upon and incorporated into the draft Act and its implementation.

The Impact of the Consultative Process on the Draft Act

By the end of May, 1987, over 300 briefs commenting on the Act had been received by Environment Canada. The ideas received throughout the public consultation process - the public information and consultation sessions, the extensive number of bilateral meetings, the National Consultation Meeting, the written briefs and correspondence - all of these had a significant impact on the reformulation of the draft Act. The comments received were reviewed, analysed, assessed and, in most instances, were incorporated into the new Canadian Environmental Protection Act. The submissions are now part of the public record and are available at Environment Canada offices across the country. Parts B and C of this document summarize and respond to the comments received.

A National Effort

The consultation process used throughout the development of the new environmental protection legislation has been a unique success. From the beginnings of the consultation process in the early days of the multi-stakeholder task forces, there has been a collective desire on the part of all participants to design and construct the best possible environmental legislation for Canada and Canadians. Credit for the new legislation is not the preserve of any one single party - all the stakeholders share in the knowledge that they contributed to the improvement and strengthening of the Act. Indeed, the drafting and formulation of the Act represent a truly national effort - an effort that in itself recognizes the diversity and multiple interests inherent in efforts to protect the Canadian environment.

The Canadian Environmental Protection Act is a first step in responding to the challenges facing us. The consultation process will continue to be the vehicle for improving environmental legislation in Canada.

PART B: RESPONSE TO WRITTEN SUBMISSIONS

RECEIVED BY

ENVIRONMENT CANADA

BY JUNE 1, 1987

Foreword

This part presents a response to each of the major comments contained in over 300 written submissions received by Environment Canada in response to the release, on 18 December 1986, of the discussion draft of the Environmental Protection Act.

The comment summaries and responses appear by section of the Environmental Protection Act to which they apply.

Comments Received	Response

Preamble and General

Scope of the Act:

The EPA is not a comprehensive piece of environmental protection legislation consolidating all other federal environmental protection statutes.

The Canadian Environmental Protection Act (CEPA) is a framework Act to which additional sections can be added to address specific problems as the need arises.

The CEPA contains the major provisions of and/or improvements to the following statutes: Environmental Contaminants Act, Clean Air Act, Canada Water Act Part III, Ocean Dumping Control Act and the Department of the Environment Act Subsection 6(2). The CEPA consolidates the major environmental protection powers of the Minister of the Environment.

Environmental protection provisions of statutes that are the responsibility of other Ministers are not changed.

To support CEPA, an environmental monitoring program will be conducted by Environment Canada (Section 7) and the results will be made available to other federal departments, provincial governments and to the public to identify where environmental protection action is required. Interdepartmental consultation will provide other departments with information on the environmental fate of substances controlled under other statutes, i.e., pesticides, radionuclides associated with the development, application and use of atomic energy, emissions, wastes, etc.

Jurisdiction

The EPA does not specify its relationship to other statutes at the federal or provincial levels.

The CEPA identifies where its provisions are applicable to other federal departments and agencies. It also identifies the processes to be used to consult with provincial governments to prevent duplication where provincial environmental protection programs or policies exist or are about to be put in place (Sections 6, 8, 12, 37 and 38). There are also specific provisions to avoid duplication of provincial and federal law (Sections 29, 37, 39 and 57).

Comments Received	Response
Homocentric Approach	
The EPA does not recognize the importance of the environment in its own right. It protects only those parts of the environment "on which human life and health depends".	The CEPA preamble is a strong policy statement with respect to environmental protection. The amended definition of the environment and toxic substances translates that policy statement into a statutory provision of the CEPA (Sections 3, 11). These new definitions recognize the importance of environmental processes and systems as well as the link between the environment and the life and health of Canadians. This approach is consistent with the Criminal Law powers of the Act (health and safety) and attempts to clarify the Peace, Order and Good Government power (environment).
Gaps	
The EPA does not include the environmental protection provisions of the: - Fisheries Act - Ocean Dumping Control Act - Transportation of Dangerous Goods Act - Canada Shipping Act - Food and Drugs Act - Pest Control Products Act - Motor Vehicle Safety Act - Atomic Energy Control Act - Northern Inland Waters Protection Act.	The CEPA contains the provisions of the Ocean Dumping Control Act which is already administered by Environment Canada. This inclusion is consistent with the consolidation of the major legislative authorities of the Minister of the Environment. Environment Canada will continue to administer Section 33 of the Fisheries Act. The environmental protection provisions of other Acts remain under the authority of the Ministers to whom they are assigned. Environment Canada will provide increased environmental quality information as well as environmental protection policy advice through the provisions of the new Act.
The EPA does not allow for the control of pesticides, radioactive substances, the products of biotechnology, transboundary water pollution, hazardous waste, acid rain, effluents, etc.	The CEPA contains an amended definition of "substance" which allows for the control by regulation of the products of biotechnology, as well as wastes, effluents and emissions in general if necessary (Section 3). The registration and control of pesticides and nuclear materials remain under the authority of their respective Acts. The CEPA provisions for improved environmental quality monitoring will assist other departments in predicting the migration and dispersion of these materials in the environment and hence leads to their better management and control (Section 7). The International Air Pollution Control provisions (Part V), the definition of "substance" (Section 11), and the regulation of fuel content (Section 46, 47) can all be used to reduce emissions of sulphates and nitrates which result in acid deposition.

Comments Received	Response
Environmental Bill of Rights	
The EPA does not contain an environmental bill of rights which specifically provides for:	
a) standing and access to the courts;	a) Citizens have the right to prosecute federal summary conviction offences. Citizens also have the right to prosecute federal indictable offences with the permission of the court. Citizens who have suffered loss or damage as a result of conduct that is contrary to any provision of the CEPA or its regulations may seek injunctions and/or sue for damages (Section 127 and 128).
b) public participation in environmental protection decision making;	b) Regulatory action under the Act is subject to public notification and consultation with the possibility of a hearing by a Board of Review. Decisions not to regulate are also reviewable by this process. Citizens are given the right to petition the Minister to add the name of a substance to the Priority Substances List which the Minister is required to compile under Section 12. Any 12 resident adult Canadians may apply to the Minister for the investigation of an alleged offence under CEPA (Section 100). CEPA allows for the creation of advisory committees to aid in the administration of the Act (Section 5).

Comments Received	Response
c) broad access to environmental information;	c) The Administrative Duties of the Act require that the Government of Canada provide information to the people of Canada on the environment and issue a periodic report of the state of the Canadian environment. Information collected under the Act is generally available to the public except for confidential business information. There is public access to information gathered by Environment Canada under the terms of the Access to Information Act. The CEPA specifically states what items can be considered confidential business in formation (Section 18(1)) and what items cannot (Section 18(2)). A third party dispute resolution mechanism for confidential business information will determine whether information submitted under the CEPA is confidential business information and therefore not subject to release under the CEPA. This procedure had previously been agreed to during consultation between representatives of industry, labour, environmental groups and governments as noted in the Environmental Contaminants Act Amendments Consultative Committee (ECAACC) report. Although the confidential business information concerns arising from the CEPA cannot be dealt with under the Workplace Hazardous Materials Information System (WHMIS) provisions of the Hazardous Products Act at this time, consultations are continuing on this point. The availability of information to the public under CEPA is much greater than under the Environmental Contaminants Act which was exempt from Access to Information requirements. To support the CEPA, an environmental monitoring program will be conducted by Environment Canada and the results will be made available to other federal, as well as all provincial, departments and the public to identify where environmental protection action is required. A report on the state of the Canadian environment, prepared on a periodic basis, is a feature of the CEPA (Section 7).
d) a substantive right to a clean environment; e) the Government as trustee of the environment;	d,e) The right to a clean environment, and the role of the federal government as trustee of the environment, would require constitutional amendments and are beyond the scope of the CEPA. Environmental protection is a shared federal-provincial responsibility under the Constitution and the federal government cannot guarantee a right to a clean environment or act as trustee on its own.
f) the right to private prosecution without interference of or referal to provincial Attorneys-General;	f) There could be constitutional constraints as well as major federal-provincial implications if the role of provincial Attorneys General were to be altered.

Comments Received	Response
g) judicial review of government action and inaction;	g) Judicial review of federal government policy decisions involves the respective roles of the courts and the Cabinet and is beyond the scope of the CEPA.
h) reform of Federal Court rules regarding class actions and the awarding of costs.	h) The reform of Federal Court rules is beyond the scope of legislation such as the CEPA.
Ministerial Discretion	
The EPA gives the Minister of the Environment and the Minister of National Health and Welfare too much discretion as to whether or not to act.	The CEPA limits the discretion of the Ministers; they are required to act to control harmful substances when specified conditions are met.
Section 1 - Title	
The title of the Act could cause confusion in that the initials are the same as those used by the United States Environmental Protection Agency.	The Act is to be known as the Canadian Environmental Protection Act (CEPA) (Section 1).
Section 2 - Definitions	
The EPA does not contain a definition of the environment.	The CEPA contains a comprehensive definition of the environment (Section 3).
The EPA definition of "substance" does not include the products and processes of biotechnology, existing chemicals, chemicals and mixtures present in effluents and emissions and wastes.	The CEPA definition of "substance" is amended to allow for the regulation of the products and processes of biotechnology, chemicals in general, wastes, effluents and emissions (Section 3).
The EPA definition of "substance" is not fully in accord with the Environmental Contaminants Act Amendment Consultative Committee (ECAACC) Final Report recommendations.	The CEPA definition of "substance" is amended technically to correspond with the ECAACC recommendation (Section 3).

Comments Received	Response
	Part I **Toxic Substances**
Section 4 - Codes, Guidelines and Environmental Quality Objectives	
The EPA does not specify the process to be used to develop criteria, how consultation will be utilized and the role of the provinces.	The CEPA has been amended to provide for broad consultation with the provinces, other federal government department, industry and the public in general in respect of the development of codes, guidelines and environmental quality objectives (Sections 6, 7, 8, 9).
Section 5 - Toxic Substance	
The EPA definition of toxic substance is too vague and will lead to difficulties in enforcement.	Under the CEPA a substance is toxic if it is entering or may enter the environment in a quantity or concentration or under conditions a) having or that have a significant immediate or long-term harmful effect on the environment that is likely to interfere with important biological processes; b) constituting or that may constitute a danger to the environment on which human life depends; or c) constituting or that may constitute a danger in Canada to human life or health (Section 11).
Section 6 - Class of Substance	
The EPA definition of "class of substance" does not apply for all purposes of the Act.	The "class of substance" definition is relocated in the Act so as to apply throughout (Section 3).
Section 7 - Information Notice	
Section 7 of the EPA should not require identification by name of those from whom information or samples are required to determine toxicity.	The notice requiring the submission of information will not identify by name those from whom information is required, rather they will be identified according to the nature of the commercial activity in the course of which they are using the substance (Section 15).
Section 7 of the EPA does not specify the breadth of information or samples required in sufficient detail.	The information or samples requested will be as described in an information notice (Section 15).
Section 7 of the EPA should not allow the Minister the discretion to extend the time period for submission of information and these extensions should be subject to public comment.	The Minister is required to consider written requests for an extension of time in which to comply with a notice requiring information but need not extend the time for compliance with the notice if the circumstances do not so warrant (Section 17).
Section 8 - Notice to Minister	
Section 8 of the EPA does not specify who is obliged to submit information nor the nature of the information to be submitted to the Minister.	The CEPA is amended to require that a specific population - those who deal with a substance "in commerce" - submit information to the Minister. Furthermore, the information required includes only that which supports a conclusion that a substance is toxic (Section 16).

Comments Received	Response
Section 9 - Communication of Information	
No comments.	
Section 10 - Non-disclosure of Information	
The EPA does not provide the public and other interested groups with access to toxicity information.	Generally information collected under the Act is available to the public and the Act requires that the Department inform the public on the state of the environment. The only exception to the release of information to the public is confidential business information. Section 13 specifically requires publication of report on the toxicity of substances specified on the Priority Substance List.
The EPA does not follow the recommendations of the ECAACC report that a third party confidentiality dispute resolution body be established.	A third party dispute resolution mechanism for confidential business information will determine whether or not information submitted is confidential business information and subject to release under the CEPA. Although the confidential business information concerns arising from the CEPA cannot be dealt with under the WHMIS provisions of the Hazardous Products Act at present, consultations are continuing on this point (Sections 20 to 24).
Section 11 - Gathering of Information	
The information gathering powers of the EPA are not broad enough, consultation and data sharing with the provinces are not specified and the Ministers are not obliged to act on their reason to suspect.	The information gathering powers under the CEPA now apply to the whole of the Act (Part I). These allow the Minister to collect a broad range of information. Further specific provisions for mandatory consultation and data sharing with provincial governments have been added. The Ministers are required to prepare and publish reports on substances assessed and indicate what action will be taken (Sections 7, 13, 14, 15, 17 and 54).
Section 12 - Advisory Committees	
The EPA provisions for Advisory Committees are more limited than and do not correspond to the recommendations of ECAACC.	The CEPA provisions for Advisory Committees have been amended and relocated within the Act. Their role is expanded to advise the Ministers on any matter related to the administration of the CEPA. These amendments follow current policy for enhanced public participation in government. Committees will be established to deal with specific problems. They will have terms of reference and timetables (Section 5). The CEPA contains provisions for Federal-Provincial Advisory Committees (Section 6).

Comments Received	Response
Section 13 - Government Services	
The utility of this section is not clear.	The CEPA does not contain this provision. Interdepartmental consultation will be utilized to ensure continued efficiency and effectiveness in government environmental protection activities.
Section 14 - Schedules I, II and III	
The EPA provisions for scheduling the names of substances and the reasons for scheduling are not clear and do not conform with the recommendations of the ECAACC.	The CEPA has been amended to provide for the creation of three lists and three schedules. The first list, the Priority Substances List, to be created and amended by the Ministers, contains the names of substances for which assessment of the environmental and health implications is a priority. The second list, the Domestic Substances List, to be created and amended by the Minister of the Environment, contains the names of substances manufactured or imported into Canada between January 1, 1984 and December 31, 1986. The third list, the Non-Domestic Substances List, to be created and amended by the Minister of the Environment, will contain the names of substances not in use in Canadian commerce as of December 31,1986. Data must be submitted to the Minister before a substance on this list can be imported or manufactured in Canada. Schedule I, to be published with the Act and amended by regulation, contains the names of substances controlled in Canada under the CEPA and the type of control regulation that applies. Schedule II, to be created and amended by regulation, contains the names of substances controlled in Canada that are subject to the export notification requirements. Schedule III is incorporated from the Ocean Dumping Control Act.

Comments Received	Response
The EPA scheduling provisions are cumbersome, allow unnecessary delay and do not provide for public input.	The CEPA contains amended listing and scheduling provisions. Two of the schedules have been replaced by lists that are prepared by the Minister. The intent of each list and schedule, as well as the process for additions and deletions, have been clarified. The public will be able to participate in the development and amendment of the Priority Substances List and the schedules. The data package requirements for substances known to exist in the world but not in Canada and for those substances that are totally new are too complex to be addressed in legislation. These data requirements will be detailed in regulations in the manner agreed to in the ECAACC Final Report so that they can be more easily amended to reflect the latest scientific information, and be subject to the full public consultation procedures required by the Office of Regulatory Affairs.
The EPA scheduling provisions do not allow the Ministers of the Environment and National Health and Welfare to act independently.	The CEPA scheduling provisions and assessment functions remain the joint responsibility of the two Ministers. This approach recognizes their respective environmental and health mandates.
Section 15 - New Substance Reporting	
Schedule I should be continuously updated and computer accessible.	Consideration will be given to maintaining a computerized list of substances that meet the new substance reporting requirements and that are on the Domestic Substances List.
The EPA mandatory reporting requirements for new substances are unclear in respect of: 1) quantity triggers; 2) time allowed for assessment and waivers for certain required information; and 3) exceptions.	Under the CEPA the quantities triggering the mandatory reporting requirements will be specified in regulations to be drafted in accordance with the recommendations of the ECAACC. Under the CEPA assessments of information in the new substance notification package must be completed within 90 days unless another assessment period is specified in a regulation (Section 35). Exceptions under the CEPA to the mandatory reporting requirements reflect the ECAACC final report recommendations. Exempted substances are those which are, as a result of their properties or conditions of use, unlikely to constitute environmental or health threats to the same degree as other industrial chemicals. Prior to manufacture, import or sale, notification and assessment of toxicity is required under another Act. The data submission requirements for a substance are strictly governed by the waiver clause (Section 29). The Minister can waive the information requirements where he is satisfied that the data is not applicable to the substance in question, or is not necessary for its preliminary environmental or health hazard evaluation.

Comments Received	Response
Section 16 - Assessment of New Substance Notification Package	
The EPA does not impose a specific time limit on the Ministers in making an assessment, with a default provision where the limit is exceeded. The scope of the assessment should be wider than of the information supplied and the results made public. The orders to permit manufacture or import, temporarily prohibit manufacture or import or to request additional information or testing should apply to all those who manufacture or import the substance.	Under the CEPA the Ministers are required to complete their assessment within 90 days unless the assessment period is extended by the Ministers (Section 31). The CEPA is amended to require that assessment of the toxicity of a substance be based on all available information and not just that contained in the notification package (Section 31). Conditional permission to manufacture or import a new substance will not be subject to the two-year limit in the CEPA. Restrictions on the importation and manufacture of new substances will be published in the Canada Gazette as notice to anyone who may wish to manufacture or import that substance of the types of restrictions they may face (Section 32).
The EPA does not specify that testing conducted by others would be acceptable for proving toxicity etc.	The regulations to be made under the authority of the CEPA will detail the data submission requirements for new substances. These regulations will specify that any data will be acceptable as long as they were developed in accordance with specified testing guidelines and good laboratory practices.
Section 17 - Regulations	
The EPA does not specify: a) the relationship between substance quantities and the information required to be submitted, b) the nature of the testing required to generate information, and c) that public input to the regulation making process is possible.	The CEPA section detailing the regulations that may be made in respect of new substance notification packages is amended to clarify the scope of regulations which may be made for various purposes (Section 33). Data submission requirements will be described in these regulations. All regulations will be subject to a consultation process to ensure coordination with the regulatory requirements of other Acts and to provide industry and other interested parties an opportunity to comment.
Section 18 - Schedule IV	
The EPA does not contain a preliminary list of substances that will be controlled when the Act is passed.	EPA Schedule IV is renamed Schedule I under the CEPA (Section 13). Schedule I contains the names of the those substances currently regulated and indicates the types of regulations under the Environmental Contaminants Act and the Clean Air Act and the reasons why they are controlled.
The EPA does not specifically provide for outside advice to the Ministers on control measures and listing on Schedule IV.	The CEPA has been amended to allow for the establishment of citizens and federal-provincial advisory committees to advise the Ministers on the administration of the Act (Sections 3, 6).

Comments Received	Response
Section 19 - Regulations	
The EPA does not prevent duplication of regulation with other pieces of federal or provincial legislation.	The CEPA has been amended to specifically prevent regulations being approved under the Act if regulations for similar purposes exist under other federal Acts (Section 37). Normally interdepartmental consultation is an effective means of avoiding duplication. Under the CEPA specific provisions ensure that consultation with the provinces will also take place.
The EPA does not stress control of toxic substances in the "late life" and "grave" phases of their life cycle.	All stages of the life cycle are covered by CEPA. The CEPA has been amended to strengthen the information gathering provisions which pertain to the requirements for recordkeeping, sampling, analysis, testing, measurement and monitoring.
The EPA Subsection 19(o) appears to be an escape clause.	This exemption provision is retained under the CEPA. It permits legitimate activities to continue which might otherwise be inadvertently included in control measures for other activities (Section 37(2)). For example, the importation of limited quantities of PCBs is required to support testing activities needed for enforcement.
The provisions of Section 19 of the EPA do not permit a nationwide approach to the control of scheduled substances.	The control of toxic substances under CEPA will be nationwide. Federal control regulations under the Act must apply all across Canada. However, federal regulations will not be made in certain instances where all provinces have put in place adequate control measures (Section 37).
Section 20 - Prohibition	
The EPA does not define fuel, does not provide for the regulation of the quality of fuels and does not exclude existing facilities that are subject to other regulations.	These amended provisions in the CEPA are based on those currently in effect under the Clean Air Act. The dictionary definition of fuel is adequate to provide for the control of substances to which the section applies. These prohibitions apply to the production, importation, sale and the offer for sale of fuels and does not pertain to there end use regardless of where the fuels are used (Sections 46, 47). Fuel quality remains the responsibility of provincial regulations governing consumer protection and ultimately is agreed to by fuel producers and fuel users.
Section 21 - Regulations	
The EPA reference to "air pollution" within the meaning of Part IV implies fuel content controls can only be enacted if there are international air pollution effects involved.	The definition of air pollution has been relocated and now applies to all of the Act (Section 3). Regulations to control the amount of material in a fuel which contributes to harmful combustion products will be developed (Section 47).
The EPA does not provide for the unannounced, random taking of samples by government inspectors.	Under circumstances defined by the Act, an inspector may take samples.

Comments Received	Response
Section 22 - Report and Remedial Measures (Release of Toxic Substances)	
The EPA provisions regarding actual or potential releases of a scheduled substance that is regulated under Section 19 are unclear with respect to:	The CEPA section that relates to actions required with respect to the release of a scheduled substance that is subject to regulations has been extensively redrafted (Section 39). The amended draft includes the following provisions:
1) the relationship to provincial regulations.	1) Provincial laws and programs to deal with a release can be recognized by regulation under the CEPA (Section 39).
2) the relationship to the Transportation of Dangerous Goods Act.	2) Other federal departments retain their responsibility for the environmental protection authorities under their legislation. Transport Canada will continue to administer the Transportation of Dangerous Goods Act with environmental policy advice from Environment Canada (Section 37).
3) the ownership of the substance in question.	3) The "owner" of a substance is the owner before or at the time of the initial or potential release. This definition excludes municipalities and others whose property or systems receive regulated substances released without their knowledge (Section 39).
4) the liability of municipalities into or onto whose systems, sites or lands a toxic substance may be released.	4) See 3) above.
5) the authority of the Minister of the Environment to take Action quickly.	5) The authority of an inspector to take or direct that emergency measures be taken (Section 39).
6) the authority of inspectors.	6) Inspection authority consistent with other statutes (Sections 70, 92 and 93).
7) the protection against personal liability of those who may take action.	7) Immunity from civil or criminal liability for third parties who assist in or provide advice on cleanup in the event of a release on the condition that they have not acted in bad faith (Section 39).
8) reporting requirement.	8) Federal and provincial reporting requirements, protection of the identity of those who report a release and the obligation to report a release are defined (Section 39).

Comments Received	Response
Section 23 - Recovery of Costs	
The EPA does not specify what type of defence is available, does not make liability absolute and does not prevent a defendant escaping liability.	The CEPA section on recovery of cleanup costs for the actual or potential release of a scheduled and regulated substance has been extensively reworded to make it clear that: 1) expenses are recoverable from the owner or person in charge of the substance immediately before its release or those who caused or contributed to an actual or potential release (Section 42); and 2) The two-year time limitation for the bringing of an action for the recovery of costs is from the time the events occur or they become evident to the Minister whichever is the later (Section 42).
Section 24 - Remedial Measures	
The EPA provisions for the recall and disposal of substances or products containing a substance in contravention of the Act or its regulations does not: 1) apply to all toxic substances; 2) apply to retailers, owners or those in possession of the substance; 3) provide for the disposal or destruction of the substance or product in accordance with provincial requirements; or, 4) allow the Minister to direct measures be taken. He must issue an order under the EPA.	The CEPA provisions for the recall and disposal of substances that have entered commerce in contravention of the Act or its regulations: 1) apply to any notifiable substance (Section 29) not just those on Schedule I (Section 43); 2) apply in appropriate situations to retailers, owners, etc. (Section 43); 3) provide authority to direct the taking of other measures for the protection of the environment or of human life or health which may include appropriate disposal (Sections 43, 98 and 99); and, 4) allow the Minister to direct that action be taken.
Section 25 - Export of Toxic Substances	
The EPA provisions covering the export of banned substances do not: 1) prevent the export where the prior informed consent of the country of destination is not received;	The CEPA obliges a person who wishes to export a toxic substance to notify an official in the country of destination, designated by regulation, of the proposed export (Section 45).

Comments Received	Response
2) require prior informed consent on the part of the country of destination for <u>each</u> export; or	The export notification provisions also require a further notification if, subsequent to the initial notification, Canada has taken further regulatory action to control the use or handling of that substance. This change is a part of the Organization for Economic Cooperation and Development Guiding Principles and the United Nations Environment Program Guidelines for Information Exchange and was part of the ECA Amendments Consultative Committee recommendations (Section 45). As well, where a country has taken action to stop the entry of a toxic substance, the first subsequent intent to export the toxic substance will also require a notification (Section 45).
3) prohibit the export of hazardous waste material.	A provision has also been added to deal with the export of hazardous wastes. Persons proposing to export hazardous wastes will be required to give 40 days advance notice to the government of the country of destination (Section 45).
<u>Section 26 - Notice of Objection</u>	
The EPA does not allow for a request for an assessment of a substance from the public.	Under the CEPA a new provision is included which permits any person to apply to the Minister for addition of a substance to the Priority Substances List (Section 12).
The EPA does not provide for the filing of a notice of objection where a decision is taken not to not regulate or schedule an existing substance.	Any person may file a notice of objection if the Ministers have assessed a substance on the Priority Substances List and have decided that regulations under the CEPA are not required (Section 13).
The EPA does not provide for intervenor funding.	Under the CEPA boards of review may award costs to those appearing before it (Section 86).
<u>Section 27 - Board of Review</u>	
No comments.	

Comments Received	Response
	Part II **Nutrients**
Section 28 - Nutrients	
The EPA definitions of nutrients are no more comprehensive than those found in Part III of the Canada Water Act.	The same nutrient definitions as those in Part III of the Canada Water Act are included in the CEPA in order to facilitate consolidation of the environmental protection authorities of the Minister of the Environment (Part III).

Comments Received	Response

Part III
Departments, Agencies, Crown Corporations and Federal Works and Undertakings

Section 29 - Definitions

The EPA definitions of federal works and undertakings and federal lands and waters do not list all possible works, undertakings or activities.

The items listed in Section 51 paragraphs (a) through (h) are specific examples and the wording "without limiting the generality of the foregoing" allows broad interpretation. Paragraph 51(i) includes all works which are not within the jurisdiction of a province.

The EPA definitions do not specify that the provisions of Part III apply to boundary waters, lands and waters under the control of Native people or the provinces where they have not exercised their own mandate.

The definition of federal lands includes federal waters and makes reference to Indian Lands (Section 51).

The issues related to boundary waters will be dealt with by Environment Canada on its future legislative agenda. Adequate study of the impacts of broader applicability of the CEPA is required before specific proposals can be made.

Section 30 - Guidelines

The EPA section on guidelines does not require the agreement of another federal Minister before a guideline is established.

The CEPA section on guidelines that are to be applicable to federal departments, agencies and Crown corporations requires the approval of the Governor in Council (Section 52).

Section 31 - Regulations

The EPA section on regulations that are to apply to federal activities need not require the concurrence of colleagues.

The CEPA retains the requirement that there be concurrence of the Minister who has responsibility for the federal work or undertaking to which the regulation is to apply. Concurrence furthers cooperation both in the development and in the implementation of such regulations (Section 53).

Section 32 - Plans and Specifications

The EPA requirements for providing the Minister with information relating to federal works does not:

1) apply to activities that may be generally harmful to the environment even if they do not involve an actual or potential release of a harmful substance; or

2) specify that the information to be provided include the impact on the environment and evaluate alternatives to the proposed activity.

3) integrate all federal assessments and hearings relating to environmental impact.

The CEPA has been amended to:

1) allow the Minister to gather information that will enable the making of an assessment of the environmental impact of a work, undertaking or activity (Section 54); and,

2) require information sufficient to provide for the evaluation of the environmental impact of the project (Section 54).

The CEPA does not incorporate the Environmental Assessment and Review Process which will be considered separately.

Comments Received	Response

Part IV
International Air Pollution

Section 33

The EPA does not regulate international water pollution.

The issues related to international water pollution will be dealt with by Environment Canada on its future legislative agenda. Adequate study of the implications of regulating international water pollution need to be assessed before comprehensive proposals can be developed and submitted for public consultation.

The EPA does not contain the Clean Air Act provisions concerning: a) national emission standards, b) air monitoring networks, and c) ambient air quality objectives.

Under the CEPA national emission standards for asbestos, lead, mercury and vinyl chloride will be continued. Part I allows for the development of environmental quality objectives, guidelines, codes of practice and monitoring. This applies to all components of the environment.

Amendments made to the CEPA will ensure that the monitoring undertaken and the objectives in place under the Clean Air Act will be continued under the CEPA.

Section 34 - National Emission Standards

The EPA only provides for the setting of national emission standards for stationary sources.

The CEPA provisions for national emission regulations have been amended to allow for the establishing of standards for any class or classes of sources of air pollution (Section 55).

The EPA does not provide for the setting of national emission standards for air contaminants that may act with others in the environment.

CEPA deals with air contaminants as toxic (Section 11).

The EPA does not provide for national emission standards except when violation of international obligations are likely.

The CEPA allows the Minister of the Environment to recommend regulations to prevent air pollution where he has reason to believe that an international agreement may be violated or that the air pollution may cause damage to another country (Section 55). As well, air pollutants may be dealt with as toxic substances (Section 11).

Section 35 - National Emission Guidelines

The EPA provisions for national emission guidelines do not require consultation, do not allow for consideration of regional factors and may be redundant relative to Section 4 of the Act.

The CEPA has been amended to require extensive federal-provincial consultation with respect to national environmental quality objectives and guidelines under the amended Section 7. These will ensure that regional factors are considered.

Under the CEPA guidelines apply throughout the Act and not just to international air pollution (Section 8).

Comments Received	Response
Section 36 - Minister's Recommendation	
The EPA does not provide for control of international water pollution that may constitute a danger to the health, safety or welfare of persons in another country.	See response to EPA Section 33.
Section 37 - Prescription of Specific Emission Standards	
The EPA should not specify that national or specific emission standards be put in place only where equivalent air pollution control benefits exist for Canadians.	The CEPA has been amended to more clearly define the reciprocity requirements intended. These relate to the granting of standing of foreign nationals where Canadians have such standing as provided for under, for example, Section 115 of the United States Clean Air Act (Sections 55 and 57).
Section 38 - Regulations	
No comments.	
Section 39 - Prohibition	
No comments.	

Comments Received	Response
	Part V **General**
Section 40 - Exercise of Regulation Making Power	
The EPA regulation-making authority does not specify that consultation, regulatory impact assessment, cost benefit analysis, notice of intent to regulate, opportunity for public participation and flexibility of process are to be provided.	This provision (Section 79), which allows quantities or concentrations to be specified in various ways, in no way reduces the need to consult where regulations are made under this Act.
Section 41 - Agreements With Provinces	
The EPA does not provide that federal-provincial agreements be formal instruments of obligation.	The CEPA authorizes the Minister to enter into federal-provincial agreements with the approval of the Governor in Council and authorizes the Minister to agree to amendments of these agreements subject to the terms and conditions that the Governor in Council may specify (Section 90).
Section 42 - Inspectors and Analysts	
The EPA does not provide for the training of inspectors and analysts.	Training programs are a departmental operational consideration that is not normally dealt with in legislation. Only those persons who, in the opinion of the Minister are qualified, will be appointed under Section 91.
The EPA does not allow for the designation of "any person or class of person" as an inspector or analyst.	The CEPA is amended to allow the designation of any person or class of person employed by a province as an inspector or analyst with the approval of the province (Section 91).
Section 43 - Inspection	
The EPA provisions for inspectors do not distinguish between inspections for compliance and inspections for purposes of gathering evidence.	The distinction between inspections and searches is provided in the wording of Sections 92 and 93. Section 93 speaks of contraventions or evidence of contraventions whereas Section 92 authorizes the inspector to enter places to find things to which the Act applies.
The EPA does not limit inspectors' powers to take samples and make copies of documents to their role in gathering evidence.	The CEPA contains inspectors' powers that are consistent with those in most other federal statutes (Section 92).
The EPA does not limit the use of environmental audit documents as evidence to cases where they are introduced by an accused.	Proposals on the use of environmental audits will be contained in the Draft Enforcement and Compliance Policy which has been released for public consultation.
The EPA places too much emphasis on coercive rather than cooperative methods of encouraging compliance.	The CEPA must make clear the behaviour that is prohibited under the Act and provide for a range of penalties to deal with violations. The Draft Enforcement and Compliance Policy includes enforcement actions as well as cooperative methods to achieve compliance.

Comments Received	Response
Section 44 - Authority to Issue Warrant	
The EPA does not require that:	
1) an inspector leave a place being inspected and obtain a warrant before returning to undertake a search action; or	There are obvious risks inherent in an inspector leaving the premises to obtain a search warrant. Evidence may disappear or be the subject of tampering. As a matter of policy, where an inspector decides that an inspection is to become a search, he/she would so inform those being inspected.
2) a danger to the environment or to human life be included in the description of exigent circumstances.	The CEPA retains the description of exigent circumstances as those where delay would result in danger to human life or the environment or the loss or destruction of evidence (Section 93).
Section 45 - Assistance to Inspectors	
The EPA does not provide protection from self incrimination for those who are compelled to provide assistance and information to an inspector.	The obligation created by this section does not necessarily lead to self incrimination. In any event, there is in Canada no general right to protection against self incrimination though there is a limited protection afforded by the Charter of Rights and Freedoms in the course of judicial proceedings (Section 94).
Section 46 - Obstruction of Inspectors	
No comments.	
Section 47 - Seizure	
The EPA does not require that an inspector have a warrant in order to seize things.	The circumstances in which a seizure is authorized are quite limited. The right to seize will arise only where the inspector has reasonable grounds to believe that a concentration has occurred and where the seizure is necessary in the public interest or the thing is required as evidence or for the purposes of analysis.
Section 48 - Extension of Period of Detention	
The EPA procedure for the extension of the period of detained material is not clear.	The procedure for obtaining an extension of the period of detention of seized material has been clarified (Section 97).
Section 49 - Forfeiture	
The EPA does not provide for forfeiture upon consent at any time.	The CEPA provisions allow for forfeiture upon consent at any time (Section 98).

Comments Received	Response
Section 50 - Inspectors; Section 51 - Information, Notices and Testing; Section 52 - Tests, Manufacture, etc.; and Section 53 - Fraud	
The EPA does not provide for imprisonment as a punishment for a summary offence or as a punishment for default in the payment of fines.	The CEPA is amended to provide a six-month jail term for all offences which are punishable on summary conviction instead of or in addition to a fine (Sections 103, 104, 105, 106).
The EPA provisions for fraud are not qualified by the term "knowingly".	The CEPA fraud provisions are amended to require that they be done "knowingly" (Section 106).
The EPA does not provide for minimum penalties.	The CEPA does not specify minimum penalties. This is consistent with the recent report of the Canadian Sentencing Commission which recommended against minimum penalties. The Commission found them to limit the discretion of the courts. The Commission was also of the view that a minimum penalty may lead to more acquittals because judges and juries will be less likely to convict where they know that a penalty will automatically follow with no possibility of discharge. Parliament may exhibit its concern with respect to the gravity of a particular offence by creating high maximum penalties.
The EPA does not specify that fines recovered under the Act and the proceeds of the sale of confiscated or forfeited articles be directed to the repair and restitution of the environment or environmental research.	The CEPA contains a new provision whereby the Governor in Council may prescribe the manner in which proceeds received under the Act shall be distributed (Section 112).
Section 54 - Damage to Environment	
The EPA provisions for penalties in respect of damage to the environment do not: 1) belong in a regulatory statute of this type, but in the Criminal Code as was recommended by the Law Reform Commission in its Working Paper No. 44 "Crimes Against the Environment"; or	The CEPA as the pre-eminent federal environmental protection statute retains provisions which sanction, in contravention of the Act, the intentional or reckless causing of a disaster that results in the loss of the use of environment and the wanton disregard for lives and safety that thereby causes a risk or death or harm to another person. These are indictable offences with no preset limit on fines and carry a maximum prison sentence of 5 years. Persons who show wanton or reckless disregard for the lives or safety of others, in contravention of the Act, thereby causing death or bodily harm are liable to be prosecuted under the Criminal Code and may be subject to ten years (Section 24) or to life imprisonment (Section 107 and 203).

Comments Received	Response
2) provide private individuals with a right to prosecute.	Individuals have the right to lay an information or a charge under federal statutes and to prosecute an offence. In a case where prosecution is by indictment, individuals must have permission of the court. The CEPA contains a new provision enabling any 12 residents of Canada to petition the Minister for an investigation of an alleged offence under the Act (Section 100). The results of such an investigation may at any time be referred to the Attorney General of Canada for any action he may wish to take (Section 102).
Section 55 - Time Limit	
The EPA limitation period is not long enough.	The limitation period of CEPA for proceedings by way of summary conviction runs from the moment the Minister of the Environment becomes aware of the subject matter of proceedings. This period of time will usually be longer than if it were simply to run from the time the offence occurred (Section 109).
The EPA should not contain a limitation period.	The prescription period applies only to summary conviction, not indictable offences. This is consistent with other federal statutes including the Criminal Code.
Section 56 - Continuing Offence	
The EPA does not appear to allow for any discretion to be exercised in charging separate offences for each day an offence continues.	The provisions for a continuing offence have been retained under the CEPA. For each day an offence continues the offender may be charged with a separate offence (Section 110).
Section 57 - Other Offences	
No comment.	
Section 58 - Liability of Directors	
The EPA does not specify that elected officials of municipal corporations are exempt from these provisions.	CEPA Section 114 is similar to the provisions of EPA Section 58. However, CEPA Section 39 provides that only a person who owns or has charge of a substance before its release or its likely initial release into the environment commits an offence under the Act. As a consequence, municipalities into the sewage system of which toxics are discharged would not be liable under the Act.
Section 59 - Proof of Offence	
The EPA does not require the identification of an employee or agent of an accused in order that the accused be held liable. Failure to do so could unfairly prejudice the accused in his defence as he will not know the case against him.	While the section does not require the specific identification of the employee or agent, the prosecution nevertheless must establish that it was an employee or an agent of the accused who committed the offence (Section 116).

Comments Received	Response
Section 60 - Defence	
The EPA does not provide for a defence of due diligence since the word "reasonable" is not used.	The CEPA wording in Section 117 has been amended to use the words "due diligence".
Section 61 - Certificate of Analyst	
The EPA does not define the term "analyst".	An analyst is a person so designated by the Minister under Section 91 (see definition Section 3).
Section 62 - Trial Without Jury	
The EPA does not afford those accused of offences under the Act the right of a trial by jury.	This section has been deleted from CEPA. An accused has the right to trial by jury as provided by the Criminal Code.
Section 63 - Discharge	
No comments.	
Section 64 - Suspended Sentence	
The EPA does not allow the court to impose probation with or without conditions and/or a recognizance without sureties.	The CEPA has been amended to allow the courts to direct that the offender enter into a recognizance with or without posting a performance bond (Section 120).
Section 65 - Additional Fine	
The EPA provisions for an additional profit-based fine are unworkable.	The CEPA provisions for an additional profit-based fine have been amended to enable the court to estimate the monetary benefits associated with the offence and to levy a corresponding fine (Section 121).
Section 66 - Orders of Court	
The EPA does not empower the courts to award costs to an innocent party, to order establishment of a research fund, or to order the institution of waste management programs.	The CEPA has been amended to include several new provisions for compensation and court orders (Section 122). Under the CEPA an aggrieved party may apply for compensation for loss or damage to property resulting from the commission of an offence by an offender (Section 123). Under the CEPA the Governor in Council may make regulations prescribing how fines recovered under this Act may be distributed (Section 112). Under Section 122 the courts may direct that, upon conviction an offender pay an amount for the purposes of research into the ecological use and disposal of the substance concerning which the offence was committed.

Comments Received	Response
Section 70 - Injunctions	
The EPA does not enable a member of the public to apply for an injunction.	The CEPA has been amended to allow a private individual who suffers or is about to suffer loss or damages caused by an activity that contravenes the Act to apply for an injunction (Section 128).
Section 71 - Civil Cause of Action	
A range of concerns were raised regarding this section.	The civil cause of action section of the CEPA has been amended to enable an individual who has suffered damage as a result of conduct contrary to the Act to sue for and recover from the person who engaged in the conduct an amount equal to the loss or damage proved to have been suffered by him and an amount to compensate him for the cost of an investigation in connection with the matter and of proceedings under the Act (Section 123 and 128).

PART C: RESPONSE TO

NATIONAL CONSULTATION MEETING

WORKSHOPS

MARCH 22-24, 1987

Foreword

This part presents a response to each of the major proposals generated by workshop participants at the National Consultation Meeting held March 22-24, 1987 in Ottawa on the draft Environmental Protection Act.

The National Consultation Meeting was designed to provide an opportunity to consult in a multi-stakeholder forum on specific key issues related to the draft Environmental Protection Act. Over 250 attendees representing federal and provincial governments, industry, labour, native and environmental groups attended and participated in consultation workshops. Workshop rapporteurs prepared a report of their group's discussions, which were presented at the final Meeting plenary session. Copies of the Workshop Report are available from Environment Canada.

The major proposals and options presented in this document are listed according to workshop subject and are as follows.

- Policy Preamble of the draft Environmental Protection Act
- Appeal Mechanisms
- An Existing Chemicals Strategy
- Establishing Codes, Guidelines and Objectives
- Enforcement and Compliance
- A Regulatory Framework for Biotechnology

Policy Preamble Workshops

The National Consultation Meeting featured two scheduled workshops which dealt with the draft Environmental Protection Act preamble. A workshop on the policy aspects of the preamble was conducted, while the second workshop focussed on the legislative/constitutional aspects. In response to participants' wishes, two additional workshops relating to the preamble were convened; one on an Environmental Bill of Rights and the other on the North.

Comments Received	Response

1. Policy Aspects

Scope of the Act

a) CONSTITUTION

The existing constitutional bases were unclear, vague and insufficient. It was proposed that the bases be more clearly stated and include:

a) Peace, Order and Good Government, (POGG);
b) Criminal Law; and
c) Trade and Commerce.

Scope of the Act

a) CONSTITUTION

CEPA is based upon a number of constitutional heads of power: Peace, Order and Good Government is reflected in the national dimension of environmental protection; Criminal Law is reflected in the protection of life and health; and Trade and Commerce is reflected in the import and export of chemicals. In addition, the environmental aspects of federal lands, works and undertakings can be regulated.

b) POLICY PRINCIPLES OF PREAMBLE

The policy portion of the preamble was too narrow in scope and was not considered a policy statement respecting a "real" EPA. A policy framework to guide current and future environmental actions was proposed. Such a framework when fleshed-out would include:

- genetic diversity
- restoration and regeneration
- critical ecological processes
- prevent/proactive
- benefit/present-future
- clean technology
- global environment
- sustainable development
- Ministerial accountability
- stewardship
- aboriginal rights
- Bill of Rights

b) POLICY PRINCIPLES OF PREAMBLE

The environmental protection directions of the CEPA are outlined in the declaration, preamble, and administrative duties, and given force of law within the Act itself.

Stewardship, aboriginal rights and Bill of Rights are beyond the scope of the CEPA. Many of the elements respecting the Bill of Rights which were dealt with at this workshop have been responded to in Part 3 of this section of the report.

The Minister of the Environment is accountable to Parliament and the Act does impose duties on the Minister since many provisions of the Act are drafted in the imperative. For example, Ministers shall compile a list of priority substances (Section 12) and citizens have a right to petition for an investigation (Section 100).

Comments Received	Response
c) LEGISLATION	c) LEGISLATION
The legislative scope of the Act as presented in the EPA preamble was too narrow. A revised legislative preamble 'overview' was proposed. Such revised text would provide additional scope for future legislative actions and the development of a 'real' EPA over a longer time frame. The expanded scope would recognize and include: - the extra-territorial impact of Canadian activities on the biosphere; - radioactive substances, by-products and processes; - biotechnology and future technologies; - expanded enforcement capabilities; - environmental impact statements; - liability; - monitoring of existing activities; and - access to information.	The legislative component of the preamble has been deleted from the CEPA. Legislative requirements are specified throughout the Act. An amended definition of "substances" clarifies that biotechnology, wastes, effluents and mixtures can be subject to regulation under the CEPA. In addition, the CEPA contains the major provisions of and/or improvements to the following statutes: Environmental Contaminants Act, Clean Air Act, Canada Water Act Part III, Ocean Dumping Control Act and the Department of the Environment Act Subsection 6(2). The CEPA consolidates some of the major environmental protection authorities of the Minister of the Environment. Environmental protection provisions of statutes which are the responsibility of other Ministers are not changed. To support the CEPA, an expanded environmental monitoring program will be conducted by Environment Canada and the results will be made available to other federal departments, provincial governments and the public to identify where environmental protection action is required. Interdepartmental consultation will provide other departments with information on the environmental fate of substances controlled under other statutes e.g., pesticides and radionuclides.
Process/Consultations	Process/Consultations
a) It was proposed that the 'Consultation Principles and Protocol' Background paper prepared by DOE for the March National Consultation Meeting serve as the basis for consultation.	a) The CEPA features provisions for consultation and public input. Environment Canada is committed to consultation with governmental and non-governmental groups and will continue to seek input during the implementation stages of the CEPA. The "Consultation Principles and Protocols" have provided the basis for a number of major consultation projects over the past two years (see Part A of this document).
b) It was proposed that Environment Canada publish a record of National Consultation Meeting workshop proceedings.	b) The proceedings of the National Consultation Meeting held March 22-24, 1987, have been published and distributed to meeting participants. Copies are available from Environment Canada.
c) A multi-stakeholder group should be struck to define further legislative requirements using the "proposed preamble" as the basis for discussion. Such a group would define the weaknesses and gaps in existing legislation and design a process to fill the gaps and strengthen legislation.	c) Environment Canada will continue to seek input from stakeholders during the implementation phases of the CEPA. In addition, stakeholder input on the enforcement and compliance and various scheduling, regulatory, etc. features will be sought.

Comments Received	Response
Proposed Wording Changes	
Policy Preamble:	Responses
Workshop participants devoted significant time and effort to preparing specific proposals for wording changes to the preamble. In the majority of cases, broad support existed for each of the proposals presented below although, in a number of instances, divergent views existed. The proposals detailed herein are those presented at the final plenary session. Many of the proposals generated by participants are word specific while in others a concept was put forward for consideration by Environment Canada and Justice.	In preparing the Preamble for the CEPA each of the proposed wording changes were examined with a view to incorporating as many of the proposed concepts as feasible. In general, the CEPA preamble provides greater prominence to the environment to guide current and future federal environmental actions.
Page 1	
Title: Replace title with "An Act representing a framework for comprehensive protection of the environment, human life and health".	Title: The title of the CEPA has been revised to provide greater prominence to the environment: "An Act respecting the protection of the environment and of human life and health".
Environment: The environment should rank equally with human health in the Act and the phrase "on which human health depends" in line 3 of the Preamble should be deleted.	Environment: The phrase has been deleted. The CEPA features a new definition of environment and the environment receives greater prominence throughout the Act.
Declaration (line 5): Replace "Canadians" with "present and future generations".	Declaration: The CEPA declaration states that environmental protection is essential to the well-being of Canada.
New first paragraph: A statement to the effect; "Recognize that humans and human activities are an integral part of the environment and that all human activity depends on the environment".	New first paragraph: This concept has been included in the CEPA declaration, the definitions of environment and of toxic substances. Greater prominence is given to the environment throughout the CEPA.
New second paragraph: Statement to the effect, "responsibility for the environment is the responsibility of all Canadians" and "government recognizes their role of leadership in education".	New second paragraph: The concept of shared responsibility for the protection of the environment is provided in the CEPA under Administrative Duties where the cooperation of governments and the participation of the people of Canada in decision-making is cited.
Lines 7,9: Replace "certain substances" with "non-human species, varieties, genetic materials and substances".	Lines 7, 9: The CEPA Preamble no longer features the phrase "certain substances". The wording "toxic substances" appears. In addition, the definition of "substances" presented in the CEPA is broader in scope than that which appeared in the EPA.

Comments Received	Response
Lines 7, 13: Replace "production" with "life cycles" (and the "cradle-to-grave" concept if possible).	Lines 7, 13: The CEPA provides for the gathering of information, assessment and control of all phases of the life cycle of substances which may harm the environment.
Page 2:	Page 2:
New Paragraph (g): "(g) develop an ongoing consultation process to ensure environmental legislation meets existing and emerging needs of the environment".	New Paragraph (g): The CEPA Administrative Duties state that the preventive approach and the participation of the people of Canada is an important feature of the environmental protection decision-making process.
New Paragraph (h): "(h) recognize the need to respect and help the global environment".	New Paragraph (h): The CEPA Preamble and Administrative Duties section features environmental protection, which would include recognition of global consideration and obligations.
New Paragraph (i): "(i) use its own standards in its international activities or, where they are more stringent, the standards of the host country".	New Paragraph (i): The CEPA Preamble recognizes "international obligations" and the fulfillment of such obligations. In fact, one of the first actions expected under the Act are controls to protect the ozone layer which is an atmospheric problem of global dimensions.
Line 26: Question as to whether or not the phrase "and largely irreversible effect" is too limiting - no consensus.	Line 26: The phrase "...and largely irreversible effect" has been deleted.
Line 27: Delete "natural".	Line 27: The concept and phrase have been deleted. A definition of "environment" has been inserted into CEPA.
Line 28: Replace "biological processes" with "biological or abiotic processes".	Line 28: The phrase has been deleted; the definition of "substance" recognizes biological processes in the environment.
Page 3:	Page 3:
Line 6: Add "adequate" to read "...make adequate provisions..."	Line 6: The phrase has been deleted.
Item (f): Should include reference to all Canadian obligations under international agreements to cover off international commitments, e.g., Organization for Economic and Cooperation and Development (OECD).	Item (f): The legislative "overview" portion of the EPA Preamble is not featured in the CEPA. The Preamble does, however, recognize to the fulfillment of international obligations respecting the environment.
General Comments	Responses
a) Concern was raised that the EPA does not recognize aboriginal jurisdiction.	a) It is inappropriate for an environmental statute to attempt to resolve aboriginal jurisdiction concerns.
b) The drafting of the new EPA provides the federal government with an opportunity to regulate those areas where there are apparent regulatory gaps.	b) The CEPA contains provisions for proposing regulations to protect the environment where other legislation does not currently do so.

Comments Received	Response
c) Low level radioactive wastes were identified as substances which should be regulated by the EPA.	c) Low-level radioactive wastes associated with the development, application and use of atomic energy, and those historical low-level radioactive wastes recognized as a federal responsibility are regulated under provisions of the Atomic Energy Control Act administered by the Atomic Energy Control Board (AECB). The sea disposal of radioactive wastes is also regulated under the ocean dumping control provisions of the CEPA Part VI and are listed in Part I of Schedule III. Other radioactive wastes not derived from the nuclear fuel cycle are called "incidental" low-level radioactive wastes, and are under provincial jurisdiction.
d) The drafting of the EPA provides an opportunity for the federal government to regulate in those areas under provincial and territorial jurisdiction where there are apparent regulatory gaps.	d) In order to identify regulatory gaps and to ensure that these gaps are filled without duplication, the federal government will utilize federal/provincial agreements on the administration of the CEPA, federal/provincial consultation with respect to regulations under the CEPA, and interdepartmental agreements with respect to both regulation and administration under the CEPA (Section 37, 38, 55 and 57). Federal regulatory powers can only be exercised within federal constitutional jurisdictions.
e) The Preamble should provide a strong endorsement of the consultative process for all aspects of the Bill, e.g., federal-provincial agreements.	e) The CEPA Preamble and its substantive provisions feature greater prominence to cooperative processes with the governments of the provinces and the public with respect to environmental protection.
f) Act does not give high enough profile to environment.	f) The CEPA Preamble, definitions and provisions provides greater prominence to the environment and this emphasis has been incorporated throughout the Act.
g) The definition of a toxic substance is too narrow.	g) The definition of "substance" featured in the CEPA has been broadened to include "animate" matter, chemicals in general, wastes, effluents and emissions. In addition, Section 11 has been broadened to include substances which are likely to interfere with important biological processes.
h) The "national dimension" provided by Peace, Order and Good Government is not strongly enough stated.	h) The CEPA Preamble "national dimension" and the definition of toxic substances (Section 11), have been revised to make the text clearer and the meaning more readily apparent. The national dimension is however only one portion of the Act's constitutional underpinning. Trade and commerce and health and safety also form a part of the jurisdiction.
i) The Preamble policy aspects workshop had extensive discussion and closed to a consensus on the general principle that "the environment should be protected for its own sake" as opposed to basing protection of the environment on human life and health.	i) The CEPA Declaration, Preamble, and definitions (Sections 3, 11) provides greater emphasis on the environment, and this concept has been featured throughout the Act.

Comments Received	Response
2. Legal/Constitutional Aspects	
a) The Act should protect the environment for its own sake, or at least reflect a balance between the protection of human health and the environment. It was suggested that the phrase "on which human life depends" in line 3 of the Preamble be deleted.	a) The CEPA Declaration, the Administrative Duties (Section 2), and the definitions (Section 3, 11) represent a strong statement with respect to environmental protection. The Declaration recognizes the link between the environment and the well-being of Canada.
b) Federal/provincial consultation and co-operation should be maximized and increased consultation and co-operation should be fully developed for the implementation and administration of the EPA.	b) The CEPA Administrative Duties and other sections explicitly state that the federal government will act in cooperation with the provinces to protect the environment. Furthermore, the CEPA provides for consultation throughout many of the administrative/regulatory phases associated with the CEPA (e.g., scheduling of substances, appeals, etc.) and the establishment of a federal-provincial advisory committee (Sections 5, 6).
c) The federal government should assert a strong role and exercise its powers to the limits of its jurisdiction.	c) The federal government will meet its obligations and discharge its responsibilities respecting the CEPA and other environmental protection legislation. Provisions for input by interested parties into the compliance and enforcement aspects of the CEPA will be implemented. The federal government will work cooperatively with provincial governments to improve the quality of the Canadian environment which is shared responsibility.
d) The federal government should intervene and fill regulatory gaps not covered by provincial/territorial statutes or regulations.	d) In order to identify regulatory gaps and to ensure that these gaps are filled without duplication, the federal government will utilize federal/provincial agreements on the administration of the CEPA, federal/provincial consultation with respect to regulations under the CEPA, and interdepartmental agreements with respect to both regulation and administration under the CEPA (Section 37).
e) The preamble should provide a strong endorsement of consultative processes for all aspects of the Bill, e.g., federal-provincial agreements, compliance and enforcement, regulations.	e) The CEPA Administrative Duties recognize the need to act in cooperation with the governments of the provinces and encourages the participation of the people of Canada through such features as public notices and Boards of Review. In addition, consultation and public input are features of many CEPA initiatives.

Comments Received	Response
f) It was proposed that EPA federal-provincial agreements include appropriate process mechanisms to ensure national focus or that a third-party consultation process should be established and include the Minister of the Environment and the Minister of National Health and Welfare. Consultations should be open and flexible, and respond to local issues - including local consultations. CCREM was proposed as a forum for establishing federal-provincial agreements respecting the EPA.	f) The CEPA agreements between provinces and the federal government and territories will be specific to each province and territory. Through federal, provincial and territorial commitment to the national enforcement and compliance policy, CEPA will be consistently applied across the country. National environmental quality objectives, guidelines and codes of practice will be developed in cooperation with provinces and territories, industry, environmental groups and other affected groups. The role for CCREM in these processes is being investigated.
g) To the maximum extent possible, a "one window" approach should be taken in the administration of this Act and other related Acts.	g) The CEPA consolidates and incorporates several pieces of environmental legislation and as such is an attempt to provide more of a "one-window" approach. The federal-provincial agreements will clearly define the roles and responsibilities of each level of government.
h) Resources should be allocated to service the consultative processes recommended for the Act. New resources may be derived in part from penalties levied under the Environmental Protection Act.	h) Environment Canada is preparing a draft policy respecting funding for intervenors. In addition, the CEPA provides for the Governor in Council to make regulations prescribing the manner in which the proceeds resulting from the payment of fines or the execution of orders under this Act shall be distributed (Section 112).
i) Federal/provincial agreements for the administration of this Act should be developed expeditiously so that they can be implemented as soon as possible.	i) Environment Canada will proceed as quickly as possible to reach agreement with other governments respecting the implementation and administration of CEPA.
j) In the process of extending this Act, the residual nature of the Act needs to be made clear where applicable.	j) The CEPA includes provisions which clarify relationships with other federal statutes, and establishes procedures for linking federal and provincial regulatory efforts.

3. Bill of Rights

Although considerable discussion was held on an environmental bill of rights, few points of agreement emerged among the stakeholders on this issue. Simply stated, an environmental bill of rights would recognize Canadians' rights to a healthy environment and would provide remedies to ensure that right. There was agreement that the following statement expressed the intent of a bill of rights.

Comments Received	Response
"Where the environmental consequence of an activity is regulated by the Act (or any other federal legislation), any person can petition to have the law enforced; in other circumstances, any person, once they have established evidence of significant, or potentially significant, damage to the environment can petition the Courts to assess the relative merits of the situation and ask the courts to grant an injunction, bearing in mind a person's right to prevent significant damage to the environment and competing rights, in the context of the public interest".	Within Canada's legal system, individuals may lay a charge under federal law for a summary conviction offence and conduct prosecution of the offence, unless the Attorney General decides to assume conduct of the case. For indictable offences, individuals may still lay a charge but need permission of the court to proceed with prosecution. The Attorney General has the same privilege of intervention as for summary conviction offences. In cases where the Attorney General rules there is insufficient evidence he/she may stay the case. Any 12 resident adult Canadians may apply to the Minister for investigation of an alleged offense under CEPA (Section 100). The CEPA allows a private individual who suffers or is about to suffer loss or damages caused by an activity that contravenes the Act to apply for an injunction and to sue for damages (Section 128).
An environmental bill of rights should also specifically provide for:	Although agreement among the stakeholders was not reached on these points, many of them are dealt within the CEPA and are included here to help clarify the issue.
a) public participation in environmental protection decision-making;	a) Regulatory action under the CEPA is subject to public notification and consultation with the possibility of a hearing by a Board of Review. Decisions not to regulate are also reviewable by this process (Sections 13, 48, 78). The CEPA provides to citizens the right to petition the Minister to add the name of a substance to the Priority Substances List for assessment (Section 12) and to investigate possible violations of the Act (Section 100). The CEPA allows for the creation of advisory committees to aid in the administration of the CEPA (Sections 5, 6).

Comments Received	Response
b) broad access to environmental information;	b) The Administrative Duties of the Act require that the Government of Canada provide information to the people of Canada on the environment and issue a periodic report of the state of the Canadian environment. Information collected under the Act is generally available to the public except for confidential business information. There is public access to information gathered by Environment Canada under the terms of the Access to Information Act. The CEPA specifically states what items can be considered confidential business information (Section 18(1)) and what items cannot (Section 18(2)). A third-party dispute resolution mechanism for confidential business information will determine whether information submitted under the CEPA is confidential business information and therefore not subject to release under CEPA. This procedure had previously been agreed upon during consultation between representatives of industry, labour, environmental groups and governments as noted in the Environmental Contaminants Act Amendments Consultative Committee (ECAACC) report. Although the confidential business information concerns arising from the CEPA cannot be dealt with under the Workplace Hazardous Materials Information System (WHMIS) provisions of the Hazardous Products Act at this time, consultations are continuing on this point. The availability of information to the public under CEPA is much greater than under the Environmental Contaminants Act which was exempt from Access to Information requirements. To support the CEPA, an expanded environmental monitoring program will be conducted by Environment Canada and the results will be made available to other federal, as well as all provincial, agencies and the public to identify where environmental protection action is required. A report on the state of the Canadian environment, prepared on a periodic basis, is a feature of the CEPA (Section 7).
c) placing the onus for justification on the proponent of an activity which harms or threatens to harm the environment;	c) There is a CEPA requirement that those who propose to import or manufacture a toxic substance, provide sufficient information (testing, samples, etc.) to demonstrate that a substance is not harmful to the environment (Section 29). In addition, the Minister may require information from those who carry on or propose to carry on an activity on federal lands for the purpose of determining the environmental impact of an activity and the need to regulate it (Section 54).

Comments Received	Response
d) the statutory right of citizens to prosecute under the Act;	d) Within Canada's legal system, individuals may lay a charge under federal law for a summary conviction offence and conduct prosecution of the offence, unless the Attorney General decides to assume conduct of the case. For indictable offences, individuals may still lay a charge but need permission of the court to proceed with prosecution. The Attorney General has the same priviledge of intervention as for summary conviction offences. In cases where the Attorney General rules there is insufficient evidence he/she may stay the case.
e) judicial review of government action or inaction;	e) Judicial review of federal government policy decisions is inappropriate in that it involves the respective roles of the courts and the Cabinet, and is beyond the scope of the CEPA.
f) reform of Federal Court rules regarding class actions and the awarding of costs.	f) The reform of Federal Court rules is beyond the scope of the CEPA.
4. The North	
• Several proposals were put forward respecting the draft EPA and the North:	
a) A legally mandated environmental assessment review process should be included in the EPA.	a) The EARP process is being reviewed by the Minister of the Environment with a view to making it more effective and responsive. A discussion paper will be released in the fall, 1987.
b) The EPA should enable any person to petition the Minister and oblige him to investigate an issue within a period of time and resolve it or refer it to the Standing Committee on Forestry and Environment.	b) Any 12 resident adult Canadians may apply to the Minister for investigation of an alleged offense under CEPA (Section 100). Individual citizens may participate in Advisory Committees, or Boards of Review, they may petition the Minister to add the name of a substance to the Priority Substances List, or they may, if there are at least twelve of them, petition the Minister to investigate an alleged offence under the CEPA. Further, any person may comment on proposed regulations when these are published in the Canada Gazette.
c) Section 4 of the EPA: national codes, guidelines and objectives should automatically become standards or regulations on federal lands, such as the north, and should be adhered to federal agencies.	c) Section 53 allows for the making of regulations where there is an inadequacy in another Act under which these lands are regulated.
d) Section 30 of the EPA should refer to federal lands as well as federal agencies.	d) Guidelines under the CEPA will apply to federal agencies (Part IV - Federal Departments, Agencies, Crown Corporation, Works, Undertakings and Lands).

Comments Received	Response
e) Section 32 of the EPA should be modified to state what action the Minister can take once he has reviewed plans, etc. of projects on federal lands (e.g., prohibit projects).	e) The CEPA enables the Minister of the Environment, with the concurrence of the responsible Minister of the Crown, to make appropriate regulations under the CEPA for the protection of the environment where no other Act of Parliament expressly provides for those regulations (Section 53).

Comments Received	Response
Appeal Mechanisms	
1. Intervenor Funding	**1. Intervenor Funding**
a) Funding for intervenors at Boards of Review should be available either before the hearing (intervenor funding) or at the time of its decision (awarding costs) and a mechanism should be in place for funding. Funding decisions should be at "arms-length" from both the Minister and the Board although cost award decisions should be the responsibility of the Board. Provision for funding does not require legislative authority, although for the Board of Review to award costs, the authority must be contained in the Act.	a) The CEPA enables Boards of Review to award costs to intervenors (Section 86). Broader provisions for intervenor funding will be dealt with in a draft policy for intervenor funding which will be distributed for discussion.
b) The Minister of the Environment should develop a departmental policy on intervenor funding and work to having a government-wide policy.	b) Environment Canada is preparing a policy on intervenor funding. The draft policy will be discussed with other federal departments with a view to developing a generic federal government policy.
2. Boards of Review	**2. Boards of Review**
c) Decisions taken by the government not to regulate a substance should be subject to appeal. Only final decisions to regulate or not to regulate a substance should cause the establishment of a formal Board of Review. Advisory Committees could deal with objections to other activities of the department (e.g., draft regulations, assessments). A Board of Review is needed only when in the Minister's opinion there is: a) unfairness in procedures; b) significant public concern; c) significant environmental and health impacts; d) significant divergence of opinion; e) significant economic impact; and f) complexity.	c) Under the CEPA, Ministerial decisions to regulate a substance, not to regulate a substance or to schedule substances for which export notification is required are subject to appeal and such appeals will be directed to the Minister for consideration of establishing a Board of Review (Section 13, 48, 81). Regulations under the Part VI - Ocean Dumping Control are also subject to Boards of Review (Section 78).
d) Ministers should develop draft practices and procedures for Boards. These should be subject to multi-stakeholder input prior to finalization and implementation.	d) Rules governing Boards of Review will be drafted and subject to public consultation (Section 89).

Comments Received	Response
3. Regulations and Procedures	**3. Regulations and Procedures**
e) Regulations should accompany the listing of a substance on Schedule IV in order to avoid confusion that will arise if a substance is scheduled but not regulated for some time after it is scheduled.	e) Entry on the schedule will include a description of the regulations controlling the substance. In addition to incorporating Schedule III of the Ocean Dumping Control Act, the CEPA creates two lists and two schedules to control the use of toxic substances in use in Canada. The first list, the Domestic Substances List, will specify all substances in use in Canada between January 1, 1984 and December 31, 1986 (Section 28(1)). The second list, the Non-Domestic Substances List, covers those chemicals not on the Domestic Substances List (Section 28(2)). Schedule I will include the names of all toxic substances controlled under the CEPA as well as the type of control and will be continually updated (Sections 36-39). Schedule II will be made up of the names of those substances which are banned or severely restricted in Canada and therefore subject to export notification requirements (Sections 44, 45). All orders or regulations pertaining to toxic substances will be published in the Canada Gazette and within 60 days of that notification any person may file with the Minister a notice of objection requesting that a board of review be established to review the order or regulation (Sections 13, 48, 78).
4. Confidential Business Information	**4. Confidential Business Information**
f) Procedures set out in the Environmental Contaminants Amendments Act Consultative Committee Report for handling confidential business information (CBI) should be incorporated into the EPA. Any discrepancies with the report recommendations with respect to handling of CBI should be resolved in time for incorporation of the necessary provisions into the Act.	f) The CEPA provides for a third party arbitration process for dealing with CBI as recommended by the Environmental Contaminants Act Amendments Consultative Committee (Sections 18-27). CBI procedures are outlined preceeding Bill of Rights workshop section.

Comments Received	Response
An Existing Chemicals Strategy	
1. Public Trust	**1. Public Trust**
a) There should be full documentation and disclosure of all decisions to regulate or not to regulate existing chemicals which have been formally assessed.	a) The CEPA specifies that, when Ministers assess whether a substance identified on the Priority Substance Listing is toxic or capable of becoming toxic, Ministers shall prepare a report of assessment and make the report public. In addition, a summary of the report will be published in the Canada Gazette (Section 13).
b) The appeal process should be available to everyone and there should be provision to appeal decisions not to regulate a chemical that has been formally assessed.	b) Under the CEPA, Ministerial decisions to regulate, not to regulate or to schedule substances for which export notification is required are subject to appeal and such appeals will be directed to the Minister for consideration of establishing a Board of Review (Sections 13, 48, 81). Any person may file a notice of objection.
c) An advisory committee should be appointed to select priority chemicals for detailed assessment and the list of these chemicals should be published.	c) The CEPA specifies that for the purpose of establishing the Priority Substance List, the Ministers may consult the governments of the provinces, members or representatives of any industrial sector, associations or persons (Section 12).
d) Environment Canada should publish an annual report on the implementation of the proposed Act.	d) A provision for an annual report to Parliament covering the administration of the Act is provided for in the CEPA (Section 130).
2. Designing an Effective Assessment Strategy	**2. Designing an Effective Assessment Strategy**
e) The federal government should continue to participate in international efforts to harmonize the assessment of existing chemicals particularly through the Organization for Economic Cooperation and Development (OECD).	e) Canada will continue its participation in OECD chemical initiatives. In November 1987, Canada will host OECD workshops on international cooperation in the areas of testing and assessment of existing chemicals.
f) The federal government should develop a coherent and comprehensive program to assess the degree of exposure of the Canadian environment to specific chemicals of priority concern, including:	f) The CEPA features provisions to allow for the implementation of a comprehensive program covering the items suggested (Part II - Toxic Substances). These include:

Comments Received	Response
- problem identification; - monitoring of levels; - effects and sources; - testing of physical-chemical and toxicological properties; - detailed review and assessment; - remedial options; and - evaluation of the effectiveness of remedial actions.	- definition of toxic substances (Section 11); - development of a list of substances for priority environmental and health assessment (Sections 12, 13); - provisions for information collection and conducting investigations (Sections 7, 14-17); - access to information and protection of confidential business information (Sections 18-27); - development and upgrading of a Domestic Substances List and a Non-Domestic Substances List (Sections 28-34) and appropriate regulations (Section 35); - regulation of toxic substances (Sections 36-37) and releases of toxic substances (Section 41); - emergency powers to prevent a significant danger in Canada to the environment or to human life or health (Section 38); - requirements for the reporting and clean-up in the event of a release of toxic substances (Sections 39-42); - requirement for remedial actions (Section 43); - development and upgrading of a List of Toxic Substances requiring Export Notification and appropriate regulations (Sections 44, 45); - regulations for elements, components and additives in fuels (Sections 46-47); - publication of proposed orders and regulations and notices of objection (Section 48); - Boards of Review (Section 81) and Advisory Committees (Sections 5, 6).
3. Resources for Assessment	**3. Resources for Assessment**
g) Canada should allocate sufficient resources to receive and evaluate foreign information on existing chemicals to help in the identification and assessment of dangers posed by chemicals in Canada.	g) Canada will allocate resources to receive and evaluate foreign information on existing chemicals to help in the identification and assessment of dangers posed by chemicals in Canada.

Comments Received	Response
h) Canada should allocate sufficient resources to undertake research and monitoring to assess dangers posed by chemicals in Canada and to undertake detailed assessment of priority chemicals.	h) Canada will continue to undertake research and monitoring to assess dangers posed by chemicals in Canada and to undertake detailed assessment of priority chemicals.
4. Institutional Mechanisms	**4. Institutional Mechanisms**
i) Canada should continue its close liaison with international organizations such as OECD to foster access to quality information on chemicals in international trade.	i) Canada will continue its active participation in international organizations such as OECD to foster access to quality information on chemicals in international trade.
j) It is essential, for the successful implementation of the proposed legislation, that there should be a well-defined program including close cooperation between various responsibility centres within Environment Canada and other government departments. In addition, the federal government should foster close cooperation with and between provincial governments, as provincial governments are responsible for the management of many natural resources, and for many aspects of human health.	j) Established programs are currently in place and are periodically reviewed to ensure their effectiveness. Multi-lateral and bi-lateral groups, organizations and committees such as CCREM exist and are being utilized to achieve comprehensive actions and exchange data and information. In addition, provision for cooperation with industry and other non-government groups is being addressed.

Comments Received	Response
Establishing Codes, Guidelines and Objectives	
1. Codes, Guidelines and Objectives	**1. Codes, Guidelines and Objectives**
a) Add a provision in Section 4 of the EPA to permit input by stakeholders in the formulation of codes, guidelines and objectives. Add provision for the issuing and regular updating of an agenda for codes, guidelines and objectives.	a) The CEPA enables the Minister to consult with the government of any province, any government department or agency or any person interested in the quality of the environment or the control or abatement of environmental pollution or to organize conferences of representatives of industry and labour, provincial and municipal authorities and any other interested parties (Section 8(3)). These could result in the Minister issuing and regularly updating an agenda for codes, guidelines and objectives development. The Governor in Council will provide for notification in the Canada Gazette of objectives, guidelines or codes of practice being formulated (Section 8-10).
b) Include in the EPA a list of definitions for codes, guidelines and objectives.	b) In the CEPA the characteristics and functions of objectives, guidelines and codes of practice are outlined. These will relate to a) the environment; b) recycling, reusing, treating, storing, disposing of or reducing the release of substances to the environment; or c) works, undertakings, or activities that affect or may affect the environment (Section 8).
c) The EPA should provide definitions of regulations, and issuance and publishing practices.	c) The Citizen's Code of Regulatory Fairness and the Statutory Instruments Act require the publishing of regulatory proposals. These also allow for input by affected parties and consideration of input prior to finalizing regulatory requirements. This approach will be applied to the development of regulations under CEPA. In addition, the CEPA provides for public input in the form of advisory committees, boards of review and petitions to the Minister (Sections 5, 81, 100).
d) Add to Section 4 of the EPA the criteria from Section 4(1) of the Clean Air Act for setting ambient air quality objectives.	d) The CEPA provides for the setting of environmental quality objectives (Section 8). These can include the ambient air quality objectives under the Clean Air Act.
e) Section 4 should be revised to emphasize that the environment is to be protected for its own sake and that codes, guidelines and objectives development initiatives do not depend upon proof of damage to human health.	e) The language of the CEPA has been revised throughout to provide prominence to the protection of the environment.
2. Scheduling/Reporting	**2. Scheduling/Reporting**
a) Section 18 of the EPA should provide for input by stakeholders in adding substances to Schedule IV.	a) The CEPA provides for public consultations and input respecting the scheduling of substances for the purposes of regulation (Section 48).

Comments Received	Response
b) The EPA should define criteria for adding substances to Schedule IV.	b) The CEPA defines toxic substances in Section 11. A substance is toxic if it is entering or may enter the environment in a quantity or concentration or under conditions: a) having or that have a significant immediate or long-term harmful effect on the environment that is likely to interfere with important biological processes; b) constituting or that may constitute a danger to the environment on which human life depends; or c) constituting or that may constitute a danger in Canada to human life or health.
c) The EPA should provide for the preparation of an annual report.	c) Annual reports are a feature of the CEPA (Section 130).
d) A document should be developed and tabled with the Act which will define process(es) for codes, guidelines, objectives and regulation development.	d) Within six months of introduction of the Act in the House, the Minister will issue a procedures document defining the processes for code, guideline, objective and regulation development. This document will include consultative procedures required by the Office of Regulatory Affairs and deal also with unique aspects of the processes such as the timing and opportunities for stakeholder input and federal/provincial roles and responsibilities.

Comments Received	Response

Enforcement and Compliance

1. Uniformity

There is a need for minimum national standards for controlling toxics and a need for ensuring uniformity of enforcement.

1. Uniformity

Environment Canada will develop, in co-operation with the provinces and territories, industry, environmental groups and other affected groups, national environmental quality objectives, guidelines and codes of practice (Sections 8-10). To ensure consistency of enforcement across Canada, an enforcement and compliance policy is being developed. It will be a major feature of the administrative agreements to be negotiated with the provinces and territories. The agreements will spell out procedures for audit and evaluation of enforcement and compliance activities (Sections 90-129, and Draft Enforcement and Compliance Policy).

2. Separation of Compliance and Enforcement

Separation between compliance and enforcement systems and processes is necessary, although close communication between such process mechanisms is necessary in the transition stages.

2. Separation of Compliance and Enforcement

Environment Canada has undertaken a review of enforcement and compliance activities. Adjustments have already been made, including the creation of the new Office of Enforcement and Compliance. Both the Department of Justice and the Department of the Environment will have increased resources to enhance enforcement capability. Also, Environment Canada will provide investigative capability in each of its five regional offices.

3. Environment Canada Responsibilities

Regardless of administrative arrangements, where any other jurisdiction cannot, will not or does not meet uniform standards, Environment Canada should fill the gap.

- Where clear federal responsibility is identified or where Environment Canada is acting to fill a gap, Environment Canada must be appropriately financed, staffed, etc.
- The federal Minister of the Environment must be held accountable for all EPA provisions.

3. Environment Canada Responsibilities

The agreements to be negotiated with the provinces and territories will be specific to each province and territory. The roles and responsibilities of each level of government will be defined in the agreements. Through federal, provincial and territorial commitment to the national enforcement and compliance policy, CEPA will be consistently applied across Canada.

Additional resources will be provided to both the Department of Justice and the Department of the Environment to enhance enforcement capability.

The federal Minister of the Environment is accountable to Parliament for administration of CEPA.

Comments Received	Response
4. Duplication	**4. Duplication**
Unnecessary duplication respecting the EPA should be avoided. In particular, the roles of actors should be clearly articulated and a lead agency(s) identified to avoid overlaps of effort.	The federal-provincial and federal-territorial agreements will outline the responsibilities of each level of government and will thereby avoid unnecessary duplication. In addition, federal-provincial advisory committees are called for in the CEPA (Section 6) to provide provincial input to the overall development of regulations where there is concurrent federal-provincial responsibility. Agreements with other federal departments having complementary responsibilities will be negotiated.
5. Federal-Provincial and Federal-Territorial Activities	**5. Federal-Provincial and Federal-Territorial Activities**
a) Where in Environment Canada's opinion, adequate compliance and enforcement systems are in place (e.g., provinces), Environment Canada should negotiate delegation of authority to the provincial systems.	a) The federal-provincial and federal-territorial agreements to be negotiated with each province will take into account the provincial programs which satisfy the objectives of the CEPA.
b) Where in Environment Canada's opinion, adequate compliance and enforcement systems are not in-place, Environment Canada should either ensure the development of adequate systems (e.g., provincial systems) or establish a DOE system.	b) The federal-provincial and federal-territorial agreements will outline the responsibilities of each level of government and, through consistent enforcement, will ensure an equivalent degree of environmental protection across Canada.
c) Where there is delegation of compliance and enforcement authority (e.g., as distinct from responsibility), Environment Canada must monitor that delegation.	c) The federal-provincial and federal-territorial agreements will outline procedures for audit and evaluation of enforcement and compliance activities.
6. Environmental Audits	**6. Environmental Audits**
a) Internal (self) audits are valuable tools by which industry identifies problems and initiates preventive measures. The Enforcement and Compliance Policy should highlight a role for government in promoting the use of internal audits and in assisting in their development.	a) The preventive value of internal, environmental audits is recognized in the Draft Enforcement and Compliance Policy, and governments and industry are encouraged to undertake effective environmental audits.

Comments Received	Response
b) Wording in the EPA should be reviewed to ensure that the use of internal audits and discussions with inspectors during compliance sessions should not be constrained, for example, - Section 43 is compliance oriented, not enforcement related; - Section 43(2)(c) should be revised to clarify the above. Also, it was proposed by some participants that internal audits not be used by compliance inspectors as a basis for obtaining search warrants.	b) The CEPA now clearly separates inspection for purposes of ensuring compliance from the provisions relating to search where there is an investigation undertaken for enforcement purposes (Sections 92-93). The Draft Enforcement and Compliance Policy clearly distinguishes between the inspection and the investigation functions which inspectors provide. The policy document stipulates that environmental audits will not be used as the sole basis for orders by the Minister, applications for search warrants, injunctions or prosecutions, but may be used either by the defence or prosecutor as evidence in any litigative action.
7. Minister's Powers	**7. Minister's Powers**
a) The duties of the federal government to enforce the EPA should be clearly defined by changing discretionary words, (e.g., "Minister may".... should read "Minister shall"...).	a) The CEPA uses "shall" in various appropriate clauses throughout.
b) With respect to response to emergencies (Section 22(2)), the Minister, rather than the Governor-in-Council, should have authority (e.g., the Minister should not be limited in responding to emergencies by having to seek approval of the Governor-in-Council).	b) The CEPA provides the Minister of the Environment with certain powers where urgent action is required (Section 38). Inspectors also have powers of intervention in certain instances requiring urgent action (Section 39(5)).

Comments Received	Response
A Regulatory Framework for Biotechnology	
1. The proposed EPA provides an excellent opportunity to legislate biotechnology.	1. The definition of "substance" has been expanded to include "animate" matter. Therefore the products and processes of biotechnology are recognized and can be controlled (Section 3).
2. An interim policy is required to bridge the gaps with respect to biotechnology prior to the enactment of the EPA.	2. An interim policy requesting voluntary notification with case-by-case evaluations is under development and will include an announcement of an advisory committee to develop the regulatory framework for biotechnology under the CEPA (Section 36).
3. Environment Canada should oversee and take a lead role in the development of biotechnology control policies and standards to safeguard the environment.	3. Environment Canada leads the Interdepartmental Committee on Safety and Regulations for Biotechnology which will ensure that environmental safeguards and control policies for biotechnology are addressed by other departments.

PART D: HIGHLIGHTS OF THE CANADIAN ENVIRONMENTAL PROTECTION ACT

Highlights of the Canadian Environmental Protection Act

- The Act is a comprehensive consolidation of some of the major environmental protection authorities of the Minister of the Environment. It incorporates the Environmental Contaminants Act, the Clean Air Act, the Canada Water Act, Part III, Ocean Dumping Control Act, and the Department of the Environment Act, Subsection 6(2).

- The Act has been reworked to provide greater emphasis on the protection of the environment.

- "Environment" is defined for the first time in a federal statute. By including the phrase "interacting natural systems", the definition embodies an ecosystem approach permitting a comprehensive environmental protection approach. The "environment" is defined as encompassing air, land, water, all layers of the atmosphere and all organic and inorganic matter and living organisms.

- The Act includes a strong policy statement linking protection of the environment and the protection of the life and health of Canadians.

- The Act focusses on the better management of chemicals throughout their entire life-cycle, as well as the products and processes of biotechnology, and includes preventive as well as remedial approaches to environmental protection.

- The definition of "substances" has been expanded and can now cover any of the products and processes of biotechnology, any existing chemicals, and mixtures or substances present in wastes, effluents and emissions.

- Data submitted under the CEPA is subject to access under the terms of the Access to Information Act. In addition, information submitted with a claim of "confidentiality" is subject to a third-party dispute mechanism to determine whether the claim to "confidentiality" is warranted. If the claim is accepted or rejected, that decision is binding on the Minister and the claimant for the purposes of CEPA.

- Whereas under the Clean Air Act the Minister of the Environment had the power to set environmental quality objectives, guidelines and codes of practice for air, under the Canadian Environmental Protection Act the Minister's powers are now expanded to include land and water.

- The CEPA gives the Minister the authority to recommend to the Governor in Council regulations with respect to any sources of air pollution which might cause environmental harm to another country, or result in the violation of an international air pollution agreement.

- The CEPA dramatically improves government's ability to control the release of toxics into the environment by providing for a broad regulation making power to provide for cradle to grave management of toxic substances.

- If the Minister believes that immediate action is required to prevent a significant danger to the environment or to human life or health, the Minister may issue an emergency order to counter the threat. If the order is to continue, the Minister must seek Cabinet approval within 14 days.

- The Act includes specific provisions for the establishment of federal/provincial advisory committees and for enhanced consultation on regulatory decisions with the provinces, other government departments, industry and the general public.

- Any group of 12 adult Canadians can petition the Minister to conduct an investigation of an alleged offence under the Act and the Minister is required to investigate all matters he/she considers necessary for determination of facts related to the case.

- The Ministers will establish and amend, as required, a Priority Substances List which will identify those substances which the Ministers are satisfied should be given a priority in assessing whether or not they are toxic or capable of becoming toxic. Reports on these assessments will be made public.

- Any person may request that the Minister add a substance to the Priority Substances List. The request shall include the reasons for adding the substance to the List.

- The CEPA requires a notification and a submission of data packages before a substance can be manufactured or imported into Canada for the first time. An assessment will determine whether a substance will be permitted to be introduced and if so the conditions under which this will be allowed.

- Any person may request that a Board of Review be established to review amongst others:
  i) A decision to regulate or not to regulate a substance;
  ii) A decision to schedule substances for which export notification is required;
  iii) Regulations under the Ocean Dumping Control Act, Part VI.

- The Act includes strict enforcement measures - corporate directors and officers who commit an offence under the Act are liable and can be prosecuted.

- Inspectors appointed under the Act can seek warrants to enter and search any place if there are reasonable grounds to suspect that the Act is being contravened.

- Failure to provide an inspector with all reasonable assistance can lead, on summary conviction, to a fine of two hundred thousand dollars, six months imprisonment, or to both.

- Failure to provide the Minister with required information can lead, on summary conviction, to a fine of up to three hundred thousand dollars, six months imprisonment, or to both.

- Some contraventions of the Act or its regulations can lead, on indictment, to a fine of up to one million dollars or to imprisonment for a term not exceeding three years or both.

- Every person who, in contravention of the Act, recklessly causes a disaster that results in a loss of the use of the environment, or shows wanton or reckless disregard for the lives or safety of other persons and thereby causes a risk of death or harm to another person is guilty of an indictable offence and is liable to a fine or to imprisonment for a term not exceeding five years or to both.

- Every person who, in contravention of the Act, shows wanton or reckless disregard for the lives or safety of other persons and thereby causes death or bodily harm to another person is subject to prosecution and a punishment of life imprisonment (Sections 203 or 204 of the Criminal Code of Canada).

- Aggrieved citizens may seek injunction for damages in respect of conduct that is contrary to any provision of the Act or regulations.

- The Ocean Dumping Control Act has been incorporated into the CEPA so that it is now integrally linked to the life-cycle control of toxic substances.

- The CEPA specifically recognizes the authorities and responsibilities of other Acts of Parliament.

- New provisions expand the monitoring responsibilities of Environment Canada regarding environmental pollution. The data will be made public and the department will use it to develop advice on the need for regulatory intervention and control under the Act or any other federal statute.

PART E:

CROSS-INDEX FOR SECTIONS OF THE DRAFT BILL OF JUNE, 1987 (CEPA) AND THE DRAFT BILL OF DECEMBER, 1986 (EPA)

CANADIAN ENVIRONMENTAL ACT (draft tabled June 26, 1987)	ENVIRONMENTAL PROTECTION ACT (draft released December 18, 1987)
Declaration	Declaration
Preamble	Preamble
SHORT TITLE	
1. Short title	Section 1
ADMINISTRATIVE DUTIES	
2. Duties of the Government of Canada	No equivalent provision.
INTERPRETATION	
3. Definitions	Section 2
HER MAJESTY	
4. Binding on Her Majesty	Section 3
ADVISORY COMMITTEES	
5. Ministerial advisory committees	No equivalent provision.
6. Federal-provincial advisory committees	No equivalent provision.
PART I	
ENVIRONMENTAL QUALITY OBJECTIVES, GUIDELINES AND CODES OF PRACTICE	
Environmental Data and Research	
7. Monitoring, research and publication	Section 13
Formulation of Objectives, Guidelines and Codes of Practice	
8. Formulation by the Minister	Section 4(1)
9. Formulation by the Minister of Health and Welfare	No equivalent provision.
Publication	
10. Publication of objectives, guidelines and codes of practice	Section 4(2)

PART II

TOXIC SUBSTANCES

Interpretation

11. Toxic substances	Section 5

Priority Substances

12. Priority Substances List	No equivalent provision.
13. Report of assessment	No equivalent provision.

Information

14. Gathering of information	Section 11
15. Notice requiring information and samples	Section 7
16. Notice to the Minister	Section 8
17. Communication of information	Section 9

Disclosure of Information

18. Confidential business information	Section 10
19. Prohibition against disclosure	Section 10
20. Application for determination	No equivalent provision.
21. Review of application	No equivalent provision.
22. Notice of objection	No equivalent provision.
23. List of candidates for review panel	No equivalent provision.
24. Destruction of records	No equivalent provision.
25. Regulations	No equivalent provision.
26. Non-disclosure by Minister	No equivalent provision.
27. Security requirements for disclosure	No equivalent provision.

Substances New to Canada

28. Domestic Substances List	Section 14
29. Manufacture or import of substances	Section 15
30. Prohibition of activity	No equivalent provision.
31. Assessment of information	Section 16(1)
32. Action to be taken after assessment	Section 16(2)
33. Amendment of Lists	No equivalent provision.
34. Publication of masked name	No equivalent provision.
35. Regulations	Section 17

Regulation of Toxic Substances

36. Addition to List of Toxic Substances	Section 18
37. Regulations	Section 19
38. Emergency orders	Section 22(2)

Release of Toxic Substances

39. Report and remedial measures	Section 22
40. Voluntary report	No equivalent provision.
41. Regulations	No equivalent provision.

42. Recovery of reasonable costs and expenses by Her Majesty — Section 23
43. Remedial measures — Section 24

Export of Toxic Substances and Waste Materials

44. List of Toxic Substances Requiring Export Notification — Section 25
45. Notice to foreign authority of export of substance specified on the List of Toxic Substances Requiring Export Notification — Section 25

Fuels

46. Prohibition — Section 20
47. Regulations — Section 21

Notice of Objection

48. Publication of proposed orders and regulations — Section 26

PART III

NUTRIENTS

Interpretation

49. Definitions — Section 28

Prohibition

50. Prohibition — Section 28.1

PART IV

FEDERAL DEPARTMENTS, AGENCIES, CROWN CORPORATIONS, WORKS, UNDERTAKINGS AND LANDS

Interpretation

51. Definitions — Section 29

Guidelines

52. Guidelines — Section 30

Regulations

53. Absence of regulations — Section 31

Plans and Specifications

54. Plans and specifications — Section 32

PART V

INTERNATIONAL AIR POLLUTION

55. Recommendation of regulations respecting international pollution	Section 36
56. Publication of proposed regulations	Section 37
57. Regulations	Section 38
58. Prohibition	Section 39
59. Plans and specifications	No equivalent provision.

PART VI

OCEAN DUMPING

Interpretation

60. Definitions	No equivalent provision.

Prohibitions

61. Dumping	No equivalent provision.
62. Dumping to avert danger	No equivalent provision.
63. Loading in Canada	No equivalent provision.
64. Disposal of ship, aircraft, platform or other man-made structure	No equivalent provision.
65. Minister may grant permit	No equivalent provision.
66. Factors to be considered in granting permit	No equivalent provision.

Publication

67. Publication in the Canada Gazette	No equivalent provision.

Notice of Objection

68. Notice of objection	No equivalent provision.

Service of Documents

69. Manner of service	No equivalent provision.

Inspections

70. Powers of inspectors	No equivalent provision.

Costs and Expenses of the Crown

71. Costs and expenses recoverable	No equivalent provision.

Detention of Ships

72. Detention of ships	No equivalent provision.

Seizure and Forfeiture

73. Seizure of ships, etc.	No equivalent provision.
74. Redelivery on deposit of security	No equivalent provision.

75. Court may order forfeiture	No equivalent provision.
76. Disposal of forfeited ship, aircraft, etc.	No equivalent provision.
77. Application by person claiming interest	No equivalent provision.
Regulations	
78. Regulations	No equivalent provision.
PART VII	
GENERAL	
Regulations	
79. Exercise of regulation-making power	Section 40
80. Transitional provision	No equivalent provision.
Board of Review Proceedings	
81. Establishment of board of review	Section 27
82. Number of members of board	Section 27
83. Appearance before board	Section 27
84. Withdrawal of notice of objection	Section 27
85. Powers of board	Section 27
86. Costs	Section 27
87. Absent member of board	Section 27
88. Report	Section 27
89. Rules for boards of review	Section 27
Agreements with Provinces	
90. Agreements	Section 41
Designation of Inspectors and Analysts	
91. Designation	Section 42
Inspection	
92. Inspection	Section 43
Search	
93. Search	Section 44
Inspectors	
94. Assistance to inspectors	Section 45
95. Obstruction of inspectors	Section 46
Seizure and detention	
96. Seizure	Section 47
97. Application to extend period of detention	Section 48

Forfeiture	
98. Forfeiture on consent	Section 49(1)
99. Forfeiture by order of court	Section 49(2), (3)
Investigation of Offences	
100. Application for investigation	No equivalent provision.
101. Investigation	No equivalent provision.
102. Minister may send evidence to Attorney General	No equivalent provision.
Offences and Punishment	
103. Inspectors	Section 50
104. Information, notices and testing	Section 51
105. Tests, manufacture, etc.	Section 52
106. Fraud	Section 53
107. Damage to the environment and death or harm to persons	Section 54
108. Other offences	Section 57
109. Time limit	Section 55
110. Continuing offence	Section 56
111. Construction of subsection 450(5) of the Canada Shipping Act	No equivalent provision.
112. Regulations	No equivalent provision.
113. Nearest court has jurisdiction for Part VI offences	No equivalent provision.
114. Liability of directors	Section 58
115. Identifying owner, master, etc.	No equivalent provision.
116. Proof of offence	Section 59
117. Defence	Section 60
118. Certificate of analyst	Section 61
Discharge	
119. Absolute or conditional discharge	Section 63
120. Suspended sentence	Section 64
121. Additional fine	Section 65
122. Orders of court	Section 66
123. Compensation for loss of property	No equivalent provision.
124. Variation of sanctions	Section 68
125. Offence	Section 67
Contraventions	
126. Ticketing	Section 69
Other Remedies	
127. Injunction	Section 70
128. Civil cause of action	Section 71
129. Civil remedies	Secton 23(6)
Report to Parliament	
130. Annual report	No equivalent provision.

PART VIII

CONSEQUENTIAL AMENDMENTS AND REPEAL

131. Access to Information Act	Section 72
132-135 Canada Water Act	Sections 73 to 76
136. Clean Air Act	Section 77
137. Department of the Environment Act	Section 78
138. Environmental Contaminants Act	Section 79
139. Ocean Dumping Control Act	No equivalent provision.

PART IX

COMING INTO FORCE

140. Coming into force	Section 80

SCHEDULES (CEPA)	SCHEDULES (EPA)
Schedule I Toxic Substances	Schedule IV
Schedule II Toxic Substances Requiring Export Notification	Schedule III
Schedule III Ocean Dumping Control Act Schedules	No equivalent schedule.